

ORIGINAL

REPORTER'S RECORD

75010

VOLUME 37 OF 51

TRIAL COURT CAUSE NO. 241-0978-04

THE STATE OF TEXAS	*	IN THE DISTRICT COURT
VERSUS	*	SMITH COUNTY, TEXAS
TRACY BEATTY	*	241ST JUDICIAL DISTRICT

TRIAL ON THE MERITS - A.M. SESSION

AUGUST 2, 2004

FILED IN
COURT OF CRIMINAL APPEALS

JUN 14 2005

Troy C. Bennett, Jr., Clerk

On the 2nd day of August, 2004, the following proceedings came on to be heard in the above-entitled and numbered cause before the HONORABLE JACK SKEEN, JR., Judge Presiding, held in Tyler, Smith County, Texas:

Proceedings reported by computerized stenotype machine; Reporter's record produced by computer-assisted transcription.

STEVE R. AWBREY, CSR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

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REPORTER'S NOTE

Uh-huh = Yes - Affirmative response

Huh-uh = No - Negative response

Quotation marks are used for clarity and do not necessarily
indicate a direct quote.

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241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

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 241ST JUDICIAL DISTRICT COURT
 SMITH COUNTY, TEXAS

P R O C E E D I N G S

(August 2, 2004)

(Open court, defendant present, no jury.)

THE COURT: On the record in Cause Number 241-0978-04, State of Texas versus Tracy Beatty. The State is present, Mr. Bingham, Mr. Harrison, Ms. Sikes; the Defense is present, Mr. Perkins, Mr. Hawk; and the defendant is present, Mr. Beatty.

Counsel, the Court became aware, I believe it was Thursday, when my coordinator, Kristen Davis, was calling the jurors to tell them to be here at 9:00 Monday morning, she called Juror, actually, Number 1, Dominick Bigham, B-I-G-H-A-M.

Called the number for him at his residence and basically was advised by his wife, as the Court understands it, that Mr. Bigham had been for apparently a short time residing with his mother up in Mineola.

She was able to obtain that address and telephone number. I believe contacted his mother. She told his wife when we needed him here. I believe she contacted his mother, told his mother when we needed him here.

Then she contacted, I know, Best Buy to try to get in touch with him. He did report in to work at 2:30 Friday where she was able to talk direct to him, so we got the word to him to be here at 8:00 this morning. He is here

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1 at 8:00 this morning.

2 The Court -- in trying to look at some cases
3 and statute, the Court believes the Court needs to ask
4 Mr. Bigham a few questions just related to his residence,
5 which appears to be a question of intent. Recognizing that
6 this is a juror, the Court is going to try to keep the
7 questions just to the issue of residence of the juror at
8 this time.

9 The Court doesn't intend to get into anything
10 more related to the situation, obviously, than he and his
11 wife than absolutely necessary, and it would only go to his
12 residence. He does appear to be staying at his mother's.
13 My understanding, from what the court coordinator --

14 Kristen, would you have a seat?

15 It's my understanding -- hang on with us just
16 a minute.

17 It's my understanding from Kristen that I
18 believe when she talked to his wife Thursday that it had
19 been a about a week, that he had been up at this mother's
20 about a week.

21 MS. DAVIS: I actually asked him how long.

22 THE COURT: What did he say?

23 MS. DAVIS: He had been living with his
24 mother for a week.

25 THE COURT: So what I would propose to do,

1 again, recognizing he is a juror, is just ask him some
2 questions in this regard.

3 Could I hear from the State?

4 MR. BINGHAM: Judge, when you're questioning
5 him on that, there's one other thing I want to bring to the
6 Court's attention and the Defense's attention.

7 Friday, at maybe 7:00, I was eating at
8 Applebee's. We went across to -- Ann had told Haley that
9 she would get her a Game Boy game for a Game Boy, so we went
10 across to Best Buy to get the Game Boy. We walked in, and I
11 approached the cell phone -- cell phone area and was
12 approached by Mr. Bingham. There was nothing exchanged about
13 the trial.

14 My back was turned to him, because when
15 you're facing the area I'm at, he walked up and said, "Can I
16 help you," and I had my cell phone. I said, "I'm looking
17 for" -- and I wasn't really looking at him. I said, "I'm
18 looking for a cover for this phone." He goes, "We don't
19 have any for the LG," and I said, "Okay. Thank you," and
20 walked away. And that was the extent of our exchange, and
21 there was no contact made after that.

22 I did not see him when I walked in. That was
23 about the extent of it. I wanted to bring that to the
24 Court's attention.

25 THE COURT: That's fine. Do you -- I'm not

1 asking this for any reason other than -- do you even
2 remember when -- were you, like, even present for his voir
3 dire?

4 MR. BINGHAM: Judge, I questioned him.

5 THE COURT: Okay. You did question him.

6 MR. BINGHAM: And whether I knew he worked at
7 Best Buy, I certainly didn't recall that, or I would have
8 stayed away from Best Buy. We were over eating at
9 Applebee's, and Ann had told Haley she would get her that
10 game, so we went over there and get her that Game Boy game.

11 When we walked in, I just went to look at the
12 cell phone covers, and my back was turned to him, and he
13 walked up.

14 THE COURT: Any questions, Mr. Perkins?

15 MR. PERKINS: No, Your Honor.

16 THE COURT: All right. Let's go ahead --
17 Mr. Perkins, do you have anything you want to relate to the
18 Court in regard to this matter, I mean, as far as what the
19 Court intends to do? I don't really know any other way to
20 proceed on it.

21 MR. PERKINS: No, Judge. In fact, as far as
22 I know from previous trial experience, it really doesn't
23 make any difference where he's living now.

24 THE COURT: I think the evidence and the
25 record is clear. I was going to ask him -- I've got his

1 questionnaire up here. I mean, it's been reported to me
2 when he moved, but I think the evidence is going to be -- I
3 was looking at his questionnaire. I think his answers are
4 going to be at the time he was selected and sworn in as a
5 juror that he resided at 1997 Meadow View Lane, Smith
6 County.

7 MR. PERKINS: And if he was a Smith County
8 resident at the time that he -- my understanding is he
9 received the summons. I don't know. I've never had this
10 situation arise during individual voir dire in a capital
11 murder case, previously.

12 THE COURT: Well, I hadn't either.

13 MR. PERKINS: I believe, if my memory is
14 correct, that at the time that he receives his summons is
15 the determinant time regarding juror qualifications. If he
16 lived in Smith County, obviously, at the time that he was
17 sworn in as a juror, my understanding of the law is even if
18 he moved out of the country, he's still an eligible juror.

19 THE COURT: What I'm going to do -- after I
20 finish asking him a few questions, probably the best
21 procedure is for the Court to question him, unless Counsel
22 just wants to make a request to ask any questions. This is
23 a juror.

24 And if you're satisfied -- I'm just going to
25 ask, once I finish, if either the State or Defense has any

1 objections to me continuing him as a juror. I think I know
2 what his answers are going to be, but I need to ask him for
3 the record.

4 And then I'm going to ask Counsel if they
5 have any objections, if they're agreeable to him continuing
6 as a juror. Maybe because that's, like Mr. Perkins said,
7 his understanding of the law, if his answers are such as I
8 anticipate.

9 Let me ask this question, Mr. Perkins: The
10 Court had -- you know, just based on what the Court has
11 seen, realizing that residency appears to be a question of
12 intent, the Court was going to ask him -- I mean, I think
13 the record is going to show at the time he got the summons
14 and at the time he was questioned and sworn in, he was
15 living at the residence, residing at the residence with his
16 wife on the questionnaire.

17 I was going to go -- I was going to ask him
18 when he moved up there, and I was going to ask him just in
19 terms of intent -- he owns -- I was also going to ask him if
20 he owned the home, because his questionnaire indicates he
21 owned the home, and if it was his intent to still be a
22 resident of Smith County and return to Smith County, had he
23 abandoned his residence, which, of course, he owns, and I
24 doubt he has, but I thought I needed to ask him. So I was
25 going to ask him some questions about his intent.

1 What's your position on that? I don't want
2 to ask a juror any more than I have to.

3 MR. PERKINS: Judge, I think that it would be
4 sufficient, at least from the Defense's perspective, to ask
5 him if he was a resident of Smith County at the time that he
6 received his summons and if he was a resident of Smith
7 County at the time he was sworn in as a juror and leave it
8 at that.

9 THE COURT: Then let me hear from someone
10 over there on the State, Mr. Bingham?

11 MR. BINGHAM: We -- I'm in agreement with the
12 Defense on that, and I think the case law is pretty clear.
13 We have it here, and I know they've looked at it. I'll
14 leave up to the Defense whether they want to question him on
15 that other issue about the Best Buy deal, leave it up to
16 them.

17 MR. PERKINS: I'm satisfied with that, Judge.
18 I mean --

19 MR. BINGHAM: That's fine. We agreed with
20 them on the status of the case law on the other issue.

21 THE COURT: Okay. That's what I'm asking
22 about.

23 Mr. Bingham, on the other issue, if the Court
24 just makes a record of where he resided when he got his
25 subpoena, where he was residing when he answered the

1 questions, where he was residing when he was sworn in.

2 And do I take it that -- both sides have
3 researched it, both sides are satisfied with it, and I'm not
4 going to have any -- everyone appears -- not to ask you to
5 commit yourselves, but you're not asking the Court to go any
6 further, and you're going -- you know, if the basic position
7 of the Court just verifies that, then you will not have any
8 objection, Mr. Perkins, you or Mr. Beatty, to me leaving him
9 on the jury; is that correct?

10 MR. PERKINS: That's correct, Your Honor.

11 THE COURT: Okay. Let me get him on in here.

12 Is that correct, Mr. Bingham?

13 MR. BINGHAM: I agreed that is correct, what
14 you stated.

15 (Juror Bigham enters the courtroom.)

16 (Open court, defendant and Juror Bigham
17 present.)

18 THE COURT: Mr. Bigham, could you just come
19 around please, sir, and have a seat right over here?

20 Mr. Bigham, I just have a couple of questions
21 that I needed to ask you, and we'll get you taken care of.

22 These are the questions that -- would you
23 just state your name for the record, please?

24 JUROR BIGHAM: Dominick Anton Bigham.

25 THE COURT: All right. Mr. Bigham, you were

1 selected as a juror in this case, State versus Tracy Beatty;
2 is that correct?

3 JUROR BIGHAM: Yes, sir.

4 THE COURT: And when you received your
5 summons to come down and appear for jury service in the
6 case, did you reside at 1997 Meadow View Lane?

7 JUROR BIGHAM: Yes, sir.

8 THE COURT: In Flint, Texas 75762?

9 JUROR BIGHAM: Yes, sir.

10 THE COURT: All right. And when you came in
11 on what I believe was the first day of individual voir dire,
12 I may not have that in front of me right now, but the record
13 would show, I believe you came -- you were here on the first
14 day of voir dire when you were questioned by -- when you
15 were questioned by the attorneys in the case, were you
16 residing at 1997 Meadow View Lane, Flint, Texas, 75762?

17 JUROR BIGHAM: Yes, sir.

18 THE COURT: Which is in Smith County?

19 JUROR BIGHAM: Yes.

20 THE COURT: All right, sir. And then
21 subsequently, then, after you were accepted and selected as
22 a juror in this case, on that day and the Court issued you
23 an oath as a juror, when you took the oath as a juror, then
24 you were still, of course, residing at 1997 Meadow View
25 Lane, Flint, Texas 75762?

1 JUROR BIGHAM: Yes, sir.

2 THE COURT: In Smith County; is that correct?

3 JUROR BIGHAM: Yes, sir.

4 THE COURT: All right. So it's been, then,
5 at some time, approximately a week ago, when you went up to
6 stay with your mother; is that correct?

7 JUROR BIGHAM: That's correct.

8 THE COURT: Anything further, Mr. Bingham?

9 MR. BINGHAM: No, Your Honor.

10 THE COURT: Anything further, Mr. Perkins?

11 MR. PERKINS: No, Your Honor.

12 THE COURT: All right. Mr. Bigham, would you
13 step back outside with Mr. Carleton, please? Thank you very
14 much, sir.

15 (Juror Bigham leaves the courtroom.)

16 THE COURT: Is the State going to be
17 requesting any further questioning, Mr. Bingham?

18 MR. BINGHAM: No, Judge, we're not.

19 THE COURT: Mr. Perkins, requesting any
20 further questioning?

21 MR. PERKINS: No, Your Honor.

22 THE COURT: Let me just ask the State then.
23 Does the State have any objections -- or does the State have
24 any objections to this being qualified juror to serve on the
25 jury?

1 MR. BINGHAM: No, Judge. Based on the
2 evidence that's in the record and our reading of the status
3 of the case law, we don't believe that he's disqualified.
4 We have no objection to him remaining on the jury.

5 THE COURT: Mr. Perkins, do you or does
6 Mr. Beatty -- do y'all waive any objections to this
7 venireperson, Mr. Bigham, serving on the jury?

8 MR. PERKINS: We don't have any objection to
9 make to his qualifications, Your Honor.

10 THE COURT: Is that correct, Mr. Beatty?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. With that, the
13 Court's going to -- yes, Mr. Harrison?

14 MR. HARRISON: Judge, I know this is a
15 pretrial the Court had scheduled before jury selection
16 today. We do have a couple of matters that we would like to
17 take up regarding the Defense's motion in limine on some
18 matters prior to voir dire. I don't know if this is the
19 appropriate time the Court wants to do it. I assume it
20 probably would be, but we do have some things that we would
21 like to bring up and address.

22 THE COURT: Okay. Let me just make the
23 obvious finding from the record that Mr. Bigham, Juror
24 Number 1, selected -- actually, Juror Number 4, voir dired
25 the first day by the State and Defense accepted for jury

1 selection, was residing at 1997 Meadow View Lane, Flint,
2 Texas, 75762, at the time he received his subpoena for jury
3 service.

4 Also, at the time he came in and was
5 questioned by the State and Defense and was residing at that
6 address in Smith County, Texas, the Court so finds at the
7 time he was sworn in as a juror in this case, and the record
8 will reflect it's been within about the last week that he
9 went up to stay with his mother, all being clear from the
10 record that he was subpoenaed and appeared and testified at
11 voir dire and was sworn in as a juror at a time that he was
12 living at the address on his questionnaire stated by the
13 Court in Smith County, Texas.

14 Anything further on that matter before we get
15 to these other motions?

16 MR. BINGHAM: Not on behalf of the State.

17 THE COURT: Anything else, Mr. Perkins?

18 MR. PERKINS: No, Your Honor.

19 THE COURT: What is it now with the motions?

20 MR. HARRISON: Judge, with regard to the
21 motion in limine filed by the Defense -- and I'm not certain
22 which one. There were several. This being the one that
23 would deal with extraneous offenses. We would like to go
24 into during opening statement in terms with regard to
25 evidence the portion in our case in chief, two prior

1 assaults committed by the defendant against the victim,
2 Carolyn click, in this case.

3 One was in 1985; one was in 1991. One of the
4 assaults resulted in a conviction out from Smith County.
5 One of a assaults was subsequently dismissed based on an
6 affidavit from the defendant.

7 We believe those would be relevant and
8 admissible under a multitude of different reasons, one being
9 pursuant to 38.36 of the Code of Criminal Procedure, talking
10 about prior relationships and evidence relating to the
11 victim and the defendant.

12 We believe it would also be admissible to
13 show the intent and motive of the defendant in that the
14 defensive theory -- one of the defensive theories in this
15 case is this was not an intentional but merely either
16 accident or manslaughter.

17 Many of the statements by the defendant
18 related to the actual killing in this case indicate a lack
19 of knowledge, a lack of intent to actually commit an
20 intentional murder, which, of course, one of the elements
21 the State would have to prove to support a conviction for
22 capital murder.

23 And we have case law in support of that
24 issue, but that would be our proffer on that issue, the 1985
25 and 1991 a assaults committed by the defendant against this

1 victim, Carolyn Click, that we believe would be admissible,
2 and we would like permission to lift the motion in limine
3 and go into those.

4 THE COURT: Okay. Go ahead, Mr. Perkins.

5 MR. PERKINS: Obviously, the Defense objects
6 to those. First of all, they are remote in time. We're
7 talking about things that happened -- well, one of them,
8 some 19 years ago, if it did. The other one, more than ten
9 years ago; close to, I guess, 13 years ago.

10 And so our first objection is, is that
11 because of the remoteness of those allegations, that they
12 are irrelevant to any proceeding.

13 The second objection we have is they are more
14 prejudicial than probative.

15 The final objection that we would have to
16 those is that I don't know -- other than the prejudice to
17 the defendant and to show the defendant in general to be a
18 bad guy, I don't know what probative value an alleged
19 assault for more than ten years ago has in relationship to
20 the allegations that Mr. Beatty is on trial for now.

21 So, obviously, the reason we filed the motion
22 in limine was to prevent the State from trying to convict
23 Mr. Beatty on the theory that he is a criminal generally.

24 So our objections are that they are remote,
25 that they're irrelevant, that the prejudicial effect

1 outweighs any probative value of those allegations,
2 especially, Judge, the allegation which was subsequently
3 dismissed.

4 Additionally, Judge, the only other thing is,
5 since they're wanting to lift the motion in limine, I'm -- I
6 can only assume they're wanting to go into this in opening
7 statement. Since it is a motion in limine, not an
8 exclusionary order, it would be highly prejudicial to
9 Mr. Beatty to allow the State to mention these allegations
10 in opening statement.

11 And then if we had a subsequent hearing on
12 the admissibility of these, if they were to be ruled
13 inadmissible, then no instruction the Court could give could
14 ever cure the harm previously been done to Mr. Beatty by
15 allowing the State to go into these allegations that the
16 jury may never hear about subsequently.

17 MR. HARRISON: Judge, I'm citing from
18 Williams versus State, 927 SW 2d 752. I've got copies for
19 both the Defense and the Court, but relevant portions of
20 that case, which has been Shepardized and is still good law,
21 indicate that, one, the State use extraneous evidence or
22 acts of evidence to prove that the defendant had engaged in
23 continuing course of violent conduct toward the victim that
24 eventually culminated in her death at the defendant's hands.

25 That was part of the Court's rationale in

1 determining the admissibility of those extraneous offenses,
2 that it went towards a continuing course of violence by the
3 defendant towards the victim.

4 Additionally, the evidence that the defendant
5 had physically assaulted and threatened to kill his wife,
6 who was a victim in this case, at various times during their
7 marriage has relevance beyond character conformity. The
8 evidence reflected the ongoing course of violent conduct
9 toward the victim tended to make it more probable that it
10 was the defendant's conscious objective or desire to cause
11 her death, intended to rebut the defensive theory the victim
12 was the aggressor, and that the defendant acted under
13 immediate influence of sudden passion.

14 Specifically with regard to rebutting the
15 defensive theories, much of this case will rest, I
16 believe -- I believe it's a fair statement that much of this
17 case will rest on whether this was an intentional murder
18 versus an accidental murder, a reckless murder, a
19 manslaughter, or an act clearly dangerous to human life as
20 evidenced by the fact that the Defense spent quite a bit of
21 time on each potential juror during voir dire talking about
22 intentional murder versus manslaughter versus recklessness
23 versus accident.

24 Additionally, to be determined relevant
25 evidence -- because, clearly, 403 would apply. Clearly, if

1 the Court believes that this is evidence admissible on the
2 one hand, the Court still has to conduct a 403 balancing
3 test. That is certainly correct.

4 Part of what goes into the balancing test
5 under 403 that Court has to consider would be the
6 relevant -- would be the ultimate issue in whether it is
7 seriously contested by the opponent. That's one thing that
8 the Court has to consider. Clearly, this would go to an
9 ultimate issue that will seriously be in contest, the fact
10 that it could be a intentional murder versus a reckless
11 murder, meaning a manslaughter.

12 To support a conviction for capital murder,
13 of course, the State has to prove the intentional nature of
14 this murder, that the State had other convincing evidence to
15 establish the ultimate issue to which the extraneous
16 misconduct was relevant.

17 The other evidence that the State would have
18 to rely on to prove the intentional aspect of this case,
19 other than this type of extraneous offense, would consist of
20 the pathologist and his findings in this case regarding the
21 injuries suffered to the victim and the state in which the
22 victim was discovered. Beyond that, there is very little to
23 establish the actual intent of the defendant.

24 So, clearly, the extraneous offenses that
25 would be relevant in showing the intentional nature of this

1 conduct, the continuing course of violence by this defendant
2 towards this victim would be, certainly, very important
3 under those circumstances. And the probative value from
4 misconduct evidence would not either alone or in combination
5 with other evidence be particularly compelling, the
6 misconduct was such a nature that the jury instruction to
7 disregard it for any but its proffered purpose is not likely
8 to have been effective.

9 In this case, clearly, the reason for the
10 inclusion of this evidence, the admissibility of this
11 evidence, would go towards the actual intent of this
12 defendant.

13 The Court can give a jury instruction to
14 limit their consideration of that evidence, going only to
15 the intent of the defendant, and that would be an
16 instruction that would be able to be followed by jurors, I
17 believe, because the -- because of the nature of the
18 extraneous offenses and the clear reason why they would be
19 introduced would be to going to show the intent of the
20 defendant, which would be the ultimate issue in this case.

21 And there would be no other, really, reason
22 for them to consider that evidence. So I think that would
23 certainly be something they could follow in the way of a
24 jury instruction.

25 THE COURT: You mentioned the balance test,

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241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

1 the balancing test under 403. Balancing test under 403?

2 MR. HARRISON: Yes, sir.

3 THE COURT: Did you mention -- did you
4 mention, when you started out, about the relationship of the
5 parties?

6 MR. HARRISON: Yes, sir. Under both
7 theories, under Section 38 -- 38.36 in the Code of Criminal
8 Procedure, which talks about the prior relationship between
9 the victim and the defendant, evidence -- all evidence --
10 and I don't have it in front of me, so I'm not quoting --
11 but it indicates that -- that all relevant facts and
12 circumstances surrounding the killing and the previous
13 relationship existing between the accused and the deceased,
14 together with all relevant facts and circumstances going to
15 show the condition of the accused's mind at the time of the
16 offense, are admissible. That's Article 38.36(a) of the
17 Texas Code of Criminal Procedure.

18 It's also -- there are also cases that
19 support that proposition.

20 Now, it is also true that under 38.36 of the
21 Code of Criminal Procedure, the rules of evidence still
22 apply. 403, the balancing test, still apply; 404 still
23 applies. It's kind of a three-step analysis.

24 One, the evidence would have to go to the
25 prior relationship of the victim and the defendant, which,

1 clearly, this does. Once that's established by the Court,
2 then, of course, the Court would then go to a 403 balancing
3 test.

4 But, again, the probative value -- and,
5 certainly, this would be prejudicial evidence, because it
6 goes to the intent of the defendant, and it goes to prior
7 facts acts of violence by this defendant towards this
8 victim.

9 But, clearly, as well, the probative value
10 outweighs the prejudicial effect in that it goes to
11 establish what would be an ultimate issue in this case,
12 showing the continuing course of violence by the defendant
13 against this victim and showing the actual intent which
14 would directly rebut a defensive theory of accident or
15 mistake or recklessness in this case.

16 THE COURT: Well, what was the -- you said
17 assaults?

18 MR. HARRISON: Yes, sir.

19 THE COURT: What's just, basically, your
20 proffer there in terms of the assaults?

21 MR. HARRISON: There was a 19 -- just one
22 moment, Judge.

23 The one in 1985 was actually an assault by
24 the defendant towards the victim. It was not prosecuted
25 based on an affidavit of the victim, but we have the

1 detective who took the affidavit, who took the statement
2 from the victim, available for trial testimony.

3 The affidavit lays out the type of assault it
4 was. It was beating with his -- by the defendant's fists.
5 There was a broken finger inflicted on the victim. Her head
6 was slammed into, I believe it was a wall, on several
7 occasions. And I believe that's the extent of the prior
8 assault.

9 THE COURT: What was the other one?

10 MR. HARRISON: The one -- the other one was a
11 conviction. It was in 1991; it was a Smith County case,
12 and, similarly, it was a physical assault by the defendant
13 towards the victim. And I don't have the manner and means,
14 but I feel confident it was a beating by his hands.

15 THE COURT: All right. Anything else,
16 Mr. Perkins?

17 MR. PERKINS: Judge, first of all, the Court
18 is going to have to make a finding that either of those is
19 relevant. And I'll use the State's case against their
20 argument.

21 Continuing course of violence, continuing
22 course of violence, and the most continuing course of
23 violence that they're proffering to the Court is something
24 from 1991. I don't think that an assault allegation from
25 12 years prior constitutes a continuing course of violence.

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1 So, first of all, I'm not ready to concede that it's even
2 relevant to any issue.

3 However, even if the Court believed that it
4 was relevant under 38.36, what 38.36 says is, is that those
5 circumstances -- facts and circumstances going to show the
6 condition of the mind of the accused at the time of the
7 offense.

8 So it's quite a leap of faith to say that
9 something from 12, 13 years prior is relevant to show
10 Mr. Beatty's intent 12 or 13 years later. That's crazy.
11 I've never heard of such in my life. Something that
12 happened 12 or 13 years ago goes to show your intent 12 or
13 13 years later.

14 Now, that's a pretty serious intent to
15 maintain throughout that 12- or 13-year period, but that's
16 what the State is asking the Court to do is to, first of
17 all, find that it's relevant to his intent at the time of
18 the alleged offense.

19 Continuing course of conduct. They fail on
20 that regard, so our argument is, is, first of all, that it's
21 not relevant under 401, that 401, 402, and especially 403
22 will trump any request that the State has, and the evidence
23 that they're trying to proffer is more prejudicial than it
24 is probative.

25 It's just the best that they have. It's what

1 they're trying to use to support their prosecution theory
2 that it's intentional. That doesn't mean that they get it
3 because they need it.

4 THE COURT: Mr. Harrison, in regard to what I
5 want to ask you to respond to was -- you can respond to
6 whatever you want to, but in regard to the continuing course
7 of conduct from the standpoint of one being an '85 and one
8 being in '91.

9 MR. HARRISON: Let me say, first, in what
10 Mr. Perkins ended with, that we don't get it just because we
11 need it. The fact that the State's evidence needs it is
12 actually spelled out in one of these cases.

13 That's a consideration for the Court in
14 determining, if the Court determines that it's admissible,
15 whether it meets the 403 test. That is one of the
16 considerations that the Court does have to look at whether
17 the State's evidence actually needs that type of evidence.
18 So that is something that the Court does and should look at.

19 Additionally, Mr. Perkins did not mention --
20 when he cited parts of Article 38.36 of the Code of Criminal
21 Procedure, he did not cite the reminder of that statute that
22 says "and the previous relationship, the previous
23 relationship existing between the accused and the deceased."

24 Certainly, all the facts and circumstances
25 that show the condition of the state of mind of the accused

1 at the time of the killing is relevant. That's clear, but
2 it goes on, and it says further "and the previous
3 relationship existing between the accused and the Defense --
4 and the defendant."

5 Additionally, there are a couple of things as
6 well. The one is that defendant also, within a week, the
7 evidence will show -- and I'll make the proffer -- that
8 additional evidence will show, from one of the witnesses in
9 this case, the defendant made statements to her about
10 killing the victim one week or so before the murder actually
11 occurred.

12 Statements would be the defendant -- the
13 defendant -- the victim had handed the victim a hammer while
14 they were working on their trailer, and the defendant
15 said -- told another witness about a week before this
16 murder, "I can't believe" -- something to the effect, "I
17 can't believe she handed me a hammer. All I could do was
18 think about killing her with that hammer, hitting her in the
19 head, killing her with that hammer and putting her
20 underneath the trailer house, but then she would just start
21 stinking, so I couldn't do that."

22 So that would be a statement within a week or
23 so of the murder, which would also go towards his intent in
24 this case, which would also be a continuing -- which would
25 also be evidence of this continuing course of violence by

1 the defendant towards the victim.

2 THE COURT: Okay.

3 MR. HARRISON: He also made mention to
4 another witness -- or to the same witness, that he had
5 thought of choking the victim just to shut her up. That
6 would be also about a week prior to the capital murder,
7 which would, again, be evidence of this continuing course of
8 violence.

9 He also -- additionally, Judge, I think it's
10 a logical conclusion that the reason there wasn't more
11 violence in the interim from 1991 to 2004 is because the
12 defendant was incarcerated in a penitentiary during that
13 time. And we do -- we haven't really addressed that issue,
14 but we do have evidence of that, and we have the parole
15 officer who knows when he went into the penitentiary in
16 19 -- I believe it was 1991, and was only released in 2003,
17 about a month before this capital murder occurred.

18 So that's the reason for the gap in this
19 continuing course of violence from the defendant towards the
20 victim. It's not as if it just stopped.

21 THE COURT: What you're asking for right now
22 to the Court -- you mentioned these statements that the
23 defendant allegedly made. I know in response to my question
24 about the continuing course of conduct, but actually what
25 you're asking the Court to rule on right now is these two

1 assaults?

2 MR. HARRISON: Yes.

3 THE COURT: Is that correct?

4 MR. HARRISON: I was actually going to get to
5 those statements, also.

6 THE COURT: Okay. I'm sorry.

7 MR. HARRISON: But because we believe, again,
8 under all those theories, under --

9 THE COURT: You want to mention the
10 statements? Are you asking me to rule on all the
11 statements, too, for purposes of your opening statement.

12 MR. HARRISON: Yes, sir.

13 THE COURT: Okay.

14 MR. HARRISON: Those statements, those
15 threats, I guess, they would be. They're not actually even
16 threats. I'm not even sure they would rise to the level of
17 an extraneous offense situation, but they were statements by
18 the defendant to a witness about thoughts of killing or
19 intentionally harming the victim that would go along with
20 the assaults that we're asking the Court to rule on.

21 THE COURT: Okay.

22 MR. HARRISON: And there are additional
23 matters. I think those are probably the ones that are
24 related to the extraneous offenses.

25 THE COURT: Let me go ahead -- do you have

1 anything else, Mr. Perkins, other than what you're --

2 MR. PERKINS: (Shakes head negatively.)

3 THE COURT: All right. In regard to the two
4 prior assaults, the one proffered by Mr. Harrison in 1985
5 and the one proffered by Mr. Harrison in 1991 with an
6 explanation to the Court, in summary form of what the State,
7 based on the proffer, intends to prove on the 1985 assault
8 by the defendant against the victim, and the 1991 assault by
9 the defendant against the victim, based on the proffer made
10 to the Court, the Court is going to lift the motion in
11 limine as it goes to those two assaults.

12 The Court, having considered and made a
13 balancing test under 403(b), the Court does find that those
14 assaults, as proffered by the State -- the Court, in lifting
15 the motion in limine, does find that they are relevant, that
16 the probative value of those does outweigh any prejudicial
17 value.

18 Those assaults, as proffered by the State and
19 the proffer of what they've told the Court their evidence
20 will be, that those assaults would go to the intent of the
21 defendant and would, therefore, be relevant, that their
22 probative value would outweigh their prejudicial value, that
23 the Court has considered, under the case cited by
24 Mr. Harrison, the State's need for the evidence in terms of
25 supporting the State's theory in terms of it being an

1 intentional murder.

2 The Court further finds that under the
3 previous existing relationship of the parties, under 38.36,
4 that it would also be relevant and admissible under that
5 statute, and that does go to previous relationship.

6 And the Court has performed a balancing test
7 required under 403(b) and finds those two prior assaults
8 relevant and admissible to go to show the intent of the
9 defendant at the time -- at the time of the alleged murder
10 as charged in the indictment based on the proffer made by
11 the State, finds the probative value outweighs the
12 prejudicial value and has performed the balancing test
13 required by 403(b). Therefore, the Court is going to lift
14 the motion in limine.

15 Of course, the Court would, in the event the
16 State does produce such evidence, naturally, the Court would
17 have a limiting instruction available to give to the jury.

18 What's next?

19 MR. PERKINS: Judge, before we get off of
20 that topic, given the additional information that
21 Mr. Harrison says -- has proffered to the Court --

22 THE COURT: Talking about those statements?

23 MR. PERKINS: -- regarding the 1985
24 assault --

25 THE COURT: Yes.

1 MR. PERKINS: I understand the Court has
2 overruled our previous objections. Without waiving any
3 future objections we would have, if they try to offer that
4 evidence, obviously, we're going to have a litany of hearsay
5 objections regarding any kind of proffer of what allegedly
6 happened through a detective or through an affidavit or --

7 THE COURT: Well, I'm laying the --

8 MR. PERKINS: I'm just saying that I
9 understand the Court has overruled all of our objections
10 thus far. When we get to that point in the trial, I'm not
11 waiving any additional objections that we would have,
12 including hearsay objections. I don't know of any way that
13 the State would be able to properly proffer what they say
14 that they can proffer through a witness, but I guess we'll
15 cross that bridge when we come to it.

16 THE COURT: Yes, sir, because -- and I
17 understand that. I'm lifting the motion in limine this
18 morning for their opening for the purposes of their
19 motion -- for the purposes of their opening statement for
20 the reasons enunciated by the Court.

21 I understand if the evidence is proffered, at
22 the time it's proffered, I mean, you've got all whatever
23 objections at that time that you would be making to it.

24 MR. PERKINS: So just so the record will be
25 replete, our objections to the State being allowed to go

1 into what they've informed the Court that they would and the
2 reason that they want the motion in limine lifted, our
3 objections under the Fourth, Fifth, and Fourteenth
4 Amendments to the United States Constitution, Article 1, the
5 due course of law under the Texas Constitution, and Texas
6 Rule of Criminal Evidence 401, 402, and 403.

7 THE COURT: Yes, sir.

8 Mr. Hawk, you had mentioned Friday --

9 Oh, Mr. Harrison, do you have something else?

10 MR. HARRISON: There was some additional
11 matters.

12 THE COURT: I'm sorry. I just wanted to be
13 sure we covered all of Mr. Hawk's motions. Go ahead.

14 MR. HARRISON: The statements by the
15 defendant to various witnesses -- and I've already
16 referenced those thoughts of killing the victim with the
17 hammer, as well as the thoughts of choking the victim to
18 death, again, I'm not sure those would rise to any kind of a
19 criminal offense or any type of extraneous offense
20 situation, but we're, again, under the same theory.

21 We would be asking the Court to lift the
22 motion in limine to those statements by the defendant as
23 well as the prior actual assaults.

24 THE COURT: Now, those statements by the
25 defendant in terms of what the State is proffering, that

1 allegedly the defendant said, those statements were to who?

2 MR. HARRISON: One was to -- actually, both
3 of those statements were Leanne Wilkerson.

4 THE COURT: Who's that?

5 MR. HARRISON: She's a witness, a listed
6 witness. She was across-the-street neighbor of the victim.

7 THE COURT: Okay. Not law enforcement?

8 MR. HARRISON: No, sir.

9 THE COURT: Those were approximately a week
10 before the murder?

11 MR. HARRISON: Yes.

12 THE COURT: So you intend to go into those in
13 your opening statement?

14 MR. HARRISON: Yes, sir.

15 THE COURT: Okay. Well, if a motion in
16 limine does cover it, the Court will lift the motion in
17 limine for purposes of those statements, based on your
18 proffer of what the defendant allegedly told Leanna -- what
19 her name?

20 MR. HARRISON: Leanna Wilkerson.

21 THE COURT: Leanna Wilkerson, a civilian
22 witness, neighbor.

23 MR. HARRISON: Judge, the next issue that I
24 think will probably be covered, although I don't think it
25 specifically is covered under the Defense's motion in

1 limine, would be the fact that from various witnesses, we
2 have evidence that the defendant was using methamphetamine
3 and marijuana leading up to the murder, as well as
4 immediately after the murder.

5 We believe that that would certainly be
6 evidence of the drug use just prior to and actually at the
7 time of the murder case would be certainly relevant evidence
8 going to the state of mind of the defendant at the time of
9 the killing.

10 Additionally, the fact that he was using
11 drugs, methamphetamine specifically, immediately after the
12 murder, we believe would certainly be relevant evidence and
13 would be admissible under 404 to show motive for the killing
14 and burglary and robbery, which is, of course, the State's
15 allegations to support the capital murder.

16 THE COURT: Mr. Perkins?

17 MR. PERKINS: Object to those as irrelevant;
18 object for all the grounds previously stated.

19 Again, all they're trying to do is show bad
20 character. I don't see how, under any sort of theory, that
21 the defendant's alleged drug use can be stretched to try and
22 fit into any kind of prosecution theory. Again, they're
23 just trying to show he's a bad guy. He's done this; he's
24 done that; he was doing this; he was doing that, so this
25 must be the reason why.

1 There's no link between the drug use and the
2 murder. So what they would like to do is get into drug use
3 so they can have the jury fabricate that link between the
4 two. There is no rational reason. There's no relevant
5 reason for the Court to allow that evidence in.

6 THE COURT: What's the relevancy,
7 Mr. Harrison?

8 MR. HARRISON: Judge, first of all, we are
9 not asking to go into the drug use and drug history,
10 generally, of the defendant. We are specifically tying it
11 to just prior to the murder, during the murder, and
12 immediately after the murder.

13 The relevancy is -- and it comes from -- the
14 defendant actually makes statements to another individual
15 about being on drugs, about being high at the time of the
16 murder, immediately after the murder.

17 We believe the relevance would be that a
18 witness will indicate that the funds of the victim's account
19 was being drained, and cash was being used for the purchase
20 of methamphetamine. And, clearly, that would go towards a
21 motive to commit the burglary or robbery of the victim in
22 the course of committing this murder would be to get money
23 to obtain money to obtain things of value for the purpose of
24 buying drugs.

25 MR. PERKINS: Gee, a minute ago, Judge, I

1 thought he had killed her because he was mad at her and had
2 been for 12 years. Now, apparently, he killed her because
3 he needed the money to buy methamphetamine, then -- and here
4 we go down the flip-flop theory for this reason. "But if
5 that won't work, I'll come back to the Court and I'll say he
6 needed it for this."

7 And so what I'll say is, is that everything
8 that the State has just got through telling the Court is
9 180 degrees in opposition to what they said previously.

10 THE COURT: Well, they're making a proffer of
11 what they're telling the Court that they've got witnesses
12 that will testify to what Mr. Harrison just said. Based on
13 Mr. Harrison's proffer, I'll lift the motion in limine as it
14 goes to him including in his opening statement what he said
15 these witnesses would testify to.

16 The Court -- about the drug use by the
17 defendant, I think he said of marijuana and methamphetamine,
18 he said, he said, I believe -- didn't you say, Mr. Harrison,
19 just prior to the murder alleged in the indictment?

20 MR. HARRISON: The fact that he was using
21 methamphetamine?

22 THE COURT: Yes.

23 MR. HARRISON: Yes, sir.

24 THE COURT: Just prior to, at the time of,
25 and after?

1 MR. HARRISON: Yes, sir.

2 THE COURT: Okay. The Court will find those
3 relevant under 404(b) and lift the motion of the -- motion
4 in limine, find them relevant as to motive.

5 MR. HARRISON: Judge, I guess the last area
6 that we need to -- that we would bring up to the Court would
7 be -- and this is -- certainly, this is something that we
8 specifically want to go into in opening statement, a
9 statement by the victim to a civilian witness just prior to
10 the time of her death.

11 Ordinarily, that would be a hearsay
12 statement, but we believe that it would be admissible in
13 this case, would be an exception under the hearsay rule for
14 three reasons. Again, those would be the victim's state of
15 mind under 803.3, the declarant's existing state of mind,
16 the emotional and physical condition.

17 The proof of motive -- because what the
18 statement -- and I should have said this before -- what the
19 statement was by the victim to a civilian witness just
20 prior --

21 THE COURT: Just a second, Mr. Harrison. I'm
22 having trouble hearing you. Let me get that door shut.

23 Okay. Go ahead. I just couldn't hear you.

24 MR. HARRISON: -- on the day of the murder
25 and just prior to the murder would be that she had had a

1 conversation with the defendant that morning, whereby she
2 had told the defendant that he must leave her residence,
3 that she was kicking him out of her house. That
4 conversation would have been in the morning on the day of
5 the murder.

6 The reason we believe that would be
7 admissible and relevant would be under 803.3, the
8 declarant's then existing state of mind, the emotion that
9 affects his physical condition.

10 Additionally, we believe it would be
11 appropriate and relevant and admissible under proof of
12 motive. And although we don't have to prove motive, the
13 Court, for instance, in Salvador versus State, found
14 testimony showing that before she was murdered, the Tejuana
15 star, Selena, told a witness she was going to fire the
16 appellant, and that that was admissible because her intent
17 to terminate the appellant's employment was relevant to show
18 the state of the relationship between the appellant at the
19 time of the shooting and to establish motive for the
20 shooting. That was cited at 980 SW 2d 475.

21 So while proof of motive is not a required
22 element in criminal cases, it's always relevant and
23 admissible to show the accused committed the offense, and
24 that's pursuant to Crane versus State, 786 SW 2d 338.

25 THE COURT: Now, who was going to be -- who

1 was the witness to put that in?

2 MR. HARRISON: That would be Betty McCarty,
3 who is an across-the-street neighbor of the victim.

4 THE COURT: Okay. So that's a witness that
5 you're proffering would testify that the victim had
6 communicated to the defendant that he was going have to move
7 out?

8 MR. HARRISON: Yes, sir, on the day of the
9 murder.

10 THE COURT: On the day of the murder.

11 MR. HARRISON: Additionally, under 38.36,
12 that would be evidence and facts -- it talks about all of
13 the relevant facts and circumstances surrounding the
14 killing, the previous relationship existing between the
15 accused and deceased, together with all relevant facts and
16 circumstances going to show the condition of the accused's
17 mind at the time of the offense are admissible.

18 Certainly, if he had been kicked out of her
19 house and no longer welcome to live there in her house, that
20 would be direct evidence going to the state of the mind of
21 the defendant as well as the relationship between the
22 accused and the defendant (sic).

23 Additionally, it shows the -- it also would
24 go to the element of the lack of consent for the defendant
25 in burglarizing the victim's house. This was not a -- it is

1 not necessarily a roommate situation at the time of this
2 murder, because the defendant had already been kicked out
3 and had been -- consent to be in the residence had been
4 removed at the time of the killing. That's pursuant to
5 Anderson versus State, 15 SW 3d 177.

6 THE COURT: Okay. Mr. Perkins?

7 MR. PERKINS: We're objecting to that, too.

8 Now, here's Theory Number 3. Theory
9 Number 1, he killed because he had been a mad at her for
10 12 years. Theory Number 2, he killed her because he was on
11 drugs and needed money for drugs. And now, Theory Number 3,
12 he killed her because he was mad because, apparently, she
13 made a hearsay statement to somebody about kicking him out
14 of her house.

15 When? When was he going to be kicked out?
16 How? When? By whom? Had he been notified of this, or was
17 that something that was going to be doing?

18 You know, the thing is, Judge, I didn't write
19 these rules, but 803.3 says, "The following are not excluded
20 by the hearsay rule, even though the declarant is available
21 as a witness." That's the way that 803 starts.

22 The declarant is available as a witness. So
23 803.3 doesn't make a lick of difference. It's not a -- it's
24 not a presence-sense impression. State of mind emotion,
25 sensation or physical condition, such as the declarant's

1 intent -- the declarant's intent, plan, motive, design,
2 mental feeling, pain, or bodily health. That's the --
3 again, we do not believe that it is relevant. We do not
4 believe its prejudicial effect is outweighed by its
5 probative value.

6 We object for the same ground that is
7 previously incorporated in our first and second objections.

8 THE COURT: Mr. Harrison?

9 MR. HARRISON: Judge, Anderson, which I've
10 previously cited, continues to say, "Therefore, we find that
11 Arnetta's state of mind prior to the crime is relevant to
12 demonstrate that she would not" -- Arnetta, obviously, being
13 the victim -- "that she did not and would not consent to
14 Anderson, the defendant's, entry into her home." That's a
15 clear example of why state of mind would be relevant and
16 admissible in this case.

17 And, again, under 38.36, it goes to the state
18 of mind of the defendant at the time of the offense as well
19 as to the relationship between the victim and the defendant.

20 THE COURT: Well, I'm going to lift the
21 motion in limine as it goes to your opening statement based
22 on what you've proffered to the Court, lifting for purposes
23 of your opening statement.

24 The Court would find it relevant. The Court
25 would find that it would go to motive. The Court would find

1 that the probative value outweighs the prejudicial value of
2 the statement, and the Court would find that it relevant and
3 admissible for purposes of your -- the Court lifting the
4 motion in limine for purposes of your opening statement that
5 would go to the state of mind of the defendant. It would go
6 to the lack of consent under 38.36.

7 Therefore, the Court would lift the motion in
8 limine for purposes of you using what you proffered to the
9 Court in your opening statement. Finding it would go to
10 motive, it's relevant, and it's relevant in that the
11 probative value outweighs the prejudicial value. Lifting
12 the motion in limine as to your opening statement is what
13 the Court is ruling on this morning.

14 MR. HARRISON: Judge, I've cited several
15 cases, and I've provided copies to the Defense, as well as
16 now to the Court.

17 THE COURT: Okay. Mr. Hawk, do you think you
18 have -- is there anything -- the Court went through these
19 motions. I know several of them related to voir dire that
20 we've completed.

21 MR. HAWK: Yes.

22 THE COURT: But -- and I have up here a
23 transcript of the pretrial. Did you get a copy of that?

24 MR. HAWK: All except one of the pretrial
25 hearings.

1 THE COURT: Okay. Do you see any there
2 that -- I tried to go through them that you still need a
3 ruling on?

4 MR. HAWK: I guess I couldn't see where any
5 of them didn't appear to have been ruled on. There were a
6 lot of references to pretrial, because of the sheer volume
7 and number of motions.

8 THE COURT: Right.

9 MR. HAWK: So the only thing I was going to
10 ask the Court this morning was, if there's an order entered
11 in each of those motions -- and I haven't seen the Court's
12 file to know that. And as long as we've secured a written
13 ruling or a 404 modification of a written ruling, then we're
14 satisfied.

15 But I looked through -- and I see, for
16 example, any specific motion, and it would say, "Judge, you
17 can take that up when you see it, if you get that order
18 entered, or whatever, and we'll check back later."

19 I just wanted to make sure we've got written
20 rulings on each of those, and I think I've provided orders
21 on each of those. That's where we're at. Otherwise, I
22 think we're ready to go.

23 THE COURT: Mr. Hawk, I think the Court was
24 ruling on them as we went through them, and you had -- the
25 Court will -- I believe you had orders attached to the back

1 of them.

2 MR. HAWK: . Yes.

3 THE COURT: And the Court will -- the Court
4 will go through and sign those orders granting or denying of
5 it, if I haven't already signed all of them. Because I know
6 I was going off your list, and I know some of them that I
7 had marked and signed.

8 But if there are others that I need to sign
9 to enter, I will do that in terms of this -- of course, if I
10 granted the motion, like a motion in limine or whatever
11 motion I granted and I granted it from the bench and it's in
12 the record, the State knows it applies.

13 I will be sure that these are file-marked
14 today. Will that be satisfactory to go on into the opening
15 statement?

16 Then I'll go through and check the actual --
17 I had gone through to be sure that I had ruled on them, and
18 I thought I had, but I was ruling from the bench. And I had
19 started through a stack of your orders, but I'm not sure,
20 and I'll have to look and see if I completed it.

21 MR. HAWK: One thing I want to bring to the
22 Court's attention. Mr. Awbrey, I think, on Thursday or
23 Friday -- I don't remember which day -- provided me a copy a
24 copy of all the pretrial hearings. I did notice that there
25 was one pretrial hearing that pertained to the motion to

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1 secure the handwriting exemplar of the defendant that I
2 don't have a copy of.

3 I don't think that's been transcribed, or if
4 so, I don't have a copy of that, because it was the one of
5 those quickly thrown-together hearings, that wasn't on the
6 pretrial docket list.

7 THE COURT: All right. Well, if you don't --

8 MR. HAWK: I don't think we're going to need
9 that today. I just wanted to let the Court know about it.
10 It was sometime before --

11 THE COURT: You think it was sometime before
12 when?

13 MR. HAWK: I had that list. I will tell you,
14 because I had made a little note in here.

15 THE COURT: It looks like the earliest one I
16 have is July -- on pretrial is July 2nd.

17 MR. HAWK: It happened before that. I want
18 to say it was the week before July the 2nd, before -- and it
19 was after June the 18th, which was the very first pretrial
20 hearing. It was one of those hearings that we threw
21 together, one of those hearings that was kind of thrown
22 together. The State filed a motion, and we showed up.
23 There was a little bit of a time issue there, but it was not
24 on a normal scheduled pretrial date.

25 THE COURT: We'll have to look for it.

1 MR. HAWK: Okay. Also, with regard to
2 transcripts, Judge, the Court had previously visited with
3 us, and I think the court reporters have discovered who it
4 was that transcribed the examining trial, where Detective
5 Pat Hendrix testified. We don't have that testimony yet.

6 THE COURT: Who transcribed that? Jill
7 McFadden?

8 MR. HAWK: And I don't think he's going to
9 testify today after discussing that with the State, but we
10 sure need to have that in sufficient time to use.

11 THE COURT: At your first break, could you
12 call Jill? Jill McFadden is the one working on that,
13 Mr. Awbrey.

14 MR. HAWK: I know Steve Awbrey has been
15 diligent in his efforts to get after her as well.

16 (Discussion off the record.)

17 MR. HARRISON: Judge, there was one other
18 thing. I noticed that Mr. Hawk and Mr. Perkins were looking
19 at a faxed transmission that we had sent them over the
20 weekend from our office. That relates to an interview that
21 we conducted with John Clary, one of the potential State's
22 witnesses.

23 He, during the course of that interview that
24 we had with him up in our office over the weekend, had
25 indicated something to the effect that the defendant had

1 told him that at the time of the murder the victim had a
2 gun, that she may have pulled the gun or held the gun on him
3 or threatened him in some way with a gun.

4 And that could have been a cause of -- under
5 the defendant's theory, the reason for the murder, could
6 implicate some sort of a self-defense type claim.

7 We -- we certainly first learned of that over
8 the weekend during the course of our interview. We
9 immediately faxed the general nature of that interview to
10 Mr. Perkins and Mr. Hawk, because we didn't believe that it
11 was contained anywhere in any statement he had given
12 previously, any written statement he had given previously,
13 or anywhere else for that matter. But as soon as we
14 received it, we faxed it to Mr. Perkins and Mr. Hawk.

15 THE COURT: Y'all read it over there,
16 Mr. Perkins? You're reading it? Is that -- is there
17 anything you want to say for the record?

18 MR. PERKINS: Judge, I guess for -- I mean,
19 everything that they've indicated is correct. I don't
20 really understand it. Through no fault of the District
21 Attorney's Office, or maybe even Mr. Clary, I just don't
22 understand what this means, because I'll just have to read
23 it into the record. Pardon the blue language.

24 "I interviewed John Clary yesterday who told
25 me that Beatty told him, 'I really fucked up this time. I

1 killed the bitch. She pulled a gun on me, and I went to
2 take the gun from her, and I choked her. I can't go back.
3 She will call the cops.'"

4 If that's what Mr. Clary said, then that's
5 fine. I don't know how she's supposed to call the cops if
6 she's dead, but maybe that's the way it was expressed to
7 him.

8 MR. BINGHAM: He didn't either. That's what
9 was expressed to him, so we turned it over as the statement.

10 MR. PERKINS: That's fine, Judge. I just
11 didn't really understand that, but --

12 MR. BINGHAM: Neither did we, and neither did
13 he.

14 MR. PERKINS: -- if that's what was told to
15 them, then that's fine.

16 THE COURT: Let me ask both parties this:
17 Would both State and Defense stay alert to any witness who
18 might come into the courtroom who is not -- obviously, there
19 was some of them -- a number of them for, I know, the
20 State's witnesses sworn in and instructed when Mr. Bingham
21 had them here, and they were sworn in and instructed under
22 the Rule. But there could be someone walk in out here, and
23 the Court, certainly, would not recognize they were a
24 witness. If y'all would be just be alert to that.

25 MR. BINGHAM: We will be, Judge.

1 THE COURT: So that if somebody walks in and
2 sits down, you get them out right away. And then at the
3 first opportunity, the Court will swear them in and put them
4 under the Rule.

5 And then, also, of course, as usual, since
6 the Rule has been invoked, when you get witnesses going down
7 the line, if you'll be sure to let them know the Rule has
8 been invoked.

9 MR. BINGHAM: Yes, sir.

10 THE COURT: And then the Court will swear
11 them in as soon as you get them before the Court.

12 MR. PERKINS: I will make sure no defense
13 witnesses come in, Judge.

14 THE COURT: Okay, Mr. Perkins.

15 Mr. Perkins, just so the Court will know just
16 in basically informing the jury just as we start out, do you
17 anticipate, if you don't mind saying now, whether or not
18 you're going to make an open opening statement now or at the
19 start of your case?

20 MR. PERKINS: I anticipate I probably will.

21 THE COURT: All right. Thank you.

22 MR. BINGHAM: Judge, one last thing that we
23 have. Did the Court grant our motion to fingerprint the
24 defendant? I can't recall.

25 THE COURT: Well, I'll grant -- I think I

1 did, and I'll grant the State's motion to fingerprint the
2 defendant. I thought that had already been done,
3 Mr. Harrison.

4 MR. HARRISON: Judge, I think the Court did
5 grant it. I don't believe it's been done yet, and,
6 obviously, we'll arrange a time.

7 THE COURT: Well, the Court will grant, if it
8 has not already been done, and I thought it had been. The
9 Court will grant the State's motion to fingerprint the
10 defendant.

11 MR. HARRISON: We did the view. I don't
12 believe we did the fingerprints.

13 MR. PERKINS: The only other thing I need to
14 address is, at some point in time -- it doesn't necessarily
15 need to be right now -- but we have been provided by the
16 State with transcripts of three separate interviews of Tracy
17 Beatty: December 19th, December 23rd, and December 26 of
18 2003.

19 At some time prior to the State's proffer of
20 those, we need to visit with them about specific objections
21 that we would have to mention as to him being on parole or
22 just recently being released from prison, those kind of
23 things.

24 I've had an opportunity to go through those
25 and mark specific allegations or specific portions of those

1 statements that we would obviously have an objection to
2 under 403 and 404. So I'll get with the State and the Court
3 on those. We'll be asking the State to excise those
4 particular references from those statements.

5 MR. BINGHAM: We agree. And we've already
6 done that.

7 THE COURT: All right. You've already done
8 that, Mr. Bingham?

9 MR. BINGHAM: We've already done that, but
10 we're going to have to put back in some stuff about the dope
11 use. We took that out in an abundance of caution, but we're
12 going to definitely redact that part. We're not going to
13 have any problem over that. We'll get together and do that.

14 THE COURT: If you can just be sure and have
15 all of that done down at the point when you get ready to
16 offer it in.

17 MR. BINGHAM: We will, Judge.

18 THE COURT: Let's be in recess for about five
19 minutes. I believe we have to get some vehicles moved.

20 (Recess.)

21 (Open court, defendant present, no jury.)

22 THE COURT: Back on the record in Cause
23 Number 241-0978-04. The Court does have a request for an
24 order to allow media coverage submitted by Bob Brackeen on
25 behalf of KETK television station, and the Court also has a

1 request for order to allow media covered on behalf of Casey
2 Knapp from the "Tyler Morning Telegraph."

3 So the Court will take those up and hear from
4 State and Defense.

5 MR. BINGHAM: Did you say Bob Brackeen?

6 THE COURT: That's him standing back there.
7 It must be his signature.

8 MR. BINGHAM: That's what I thought. We
9 don't have any objection to the coverage by either
10 Mr. Brackeen and the channel he works for, or Casey Knapp.
11 We don't have any objection to either one covering it.

12 THE COURT: Go ahead, Mr. Perkins.

13 MR. PERKINS: On behalf of Mr. Beatty, Your
14 Honor, we do have an objection. The estimated length of
15 trial is supposed to be approximately two weeks. There's a
16 large number of potential witnesses that may be called.

17 The Rule of Witnesses will be invoked on
18 these individuals, and because of the potential for trouble
19 in enforcing the Rule of Witnesses and for other reasons
20 which may deprive Mr. Beatty of a fair and impartial trial
21 in this matter, we're objecting to the presence of cameras
22 in the courtroom.

23 THE COURT: All right. The Court is going to
24 grant the request of Bob Brackeen representing KETK, and
25 also grant the request of Casey Knapp, representing "The

1 Tyler Morning Telegraph," allowing media coverage of the
2 trial. The Court will sign and enter those orders at this
3 time.

4 MR. PERKINS: In that event, Your Honor, in
5 addition to the standard instructions given to the witnesses
6 under the Rule of Witnesses, I would ask that the Court,
7 directly, to the witnesses who are currently present and
8 that the State would have the District Attorney's Office,
9 and hold the District Attorney's Office responsible for
10 informing witnesses who were not present, not to watch any
11 news accounts, read any newspaper article regarding coverage
12 of the trial, testimony of witnesses, that sort of
13 instruction in addition to the regular instructions given to
14 jurors.

15 THE COURT: The Court will do that,
16 Mr. Perkins.

17 MR. PERKINS: I'm sorry. Potential
18 witnesses.

19 THE COURT: I understand.

20 MR. PERKINS: And the same instructions,
21 obviously, to the jurors.

22 THE COURT: The Court will do that,
23 Mr. Perkins.

24 MR. BINGHAM: Judge, there are witnesses in
25 the courtroom we would just ask the Court to swear in.

1 THE COURT: All right. Those of you who are
2 in the courtroom to testify as witnesses in this case, what
3 the Court will need you to do is stand up and raise your
4 right hand, and I am going to administer you the oath of the
5 witnesses.

6 After you take the oath, one by one, starting
7 over here going this way (indicating) and on back, we need
8 you to state your name into the record, and then I have some
9 additional instructions from you.

10 So if all of you who are going to testify as
11 witnesses, stand and raise your right hand and remain
12 standing. Just raise your right hand.

13 Do you and each of you solemnly swear that in
14 the cause now on trial, your testimony will be the truth,
15 the whole truth, and nothing but the truth, so help you God?

16 THE WITNESSES: I do.

17 THE COURT: All right. Now just remain
18 standing. You can put down your right hand.

19 But right here, ma'am, could you state your
20 full name for the record loud enough where the court
21 reporter can hear?

22 A WITNESS: Betty McCarty.

23 THE COURT: Yes, sir?

24 A WITNESS: Thomas Tucker.

25 THE COURT: Yes, ma'am?

1 A WITNESS: Tamara Beatty.

2 THE COURT: Okay. Come back this way

3 (indicating). Yes, ma'am?

4 A WITNESS: Tonya Walker.

5 A WITNESS: John Clary.

6 A WITNESS: Mike Killough.

7 A WITNESS: Stacy Killough.

8 THE COURT: Yes, ma'am?

9 A WITNESS: Leanna Wilkerson.

10 THE COURT: All right. Y'all just be seated
11 right there.

12 The ones I hadn't gotten to, if you'll remain
13 standing. Okay. Go ahead, ma'am. Right there.

14 A WITNESS: Linda Trotter.

15 THE COURT: Yes, ma'am?

16 A WITNESS: Renee Loomis.

17 THE COURT: Now, all of you who --

18 A WITNESS: Sergeant Roy Tomlin.

19 THE COURT: All right. All of you who have
20 been sworn in as witnesses are now under the jurisdiction of
21 the Court as witnesses, and you need to listen to the
22 following instructions that the Court is going to give you.

23 The Rule of Witnesses has been invoked. That
24 means several things. Number one, do not discuss what you
25 anticipate your testimony will be in this case among

1 yourselves nor with any other person, and that means no
2 other person. Do not testify -- do not discuss anything
3 about this case among yourselves nor with any other person.

4 After you testify, do not discuss anything
5 about what your testimony was with any other person or talk
6 to any other person about the case. The only individuals
7 you can discuss the case with or your testimony with are any
8 of the State's attorneys or any of the defense attorneys.

9 Also, do not be present where anyone else is
10 discussing the case. Don't be in anyone else's presence who
11 is talking about the case while you are under the Rule of
12 Witnesses.

13 After you testify, you're still under the
14 Rule of Witnesses, unless you're finally excused. So unless
15 you're finally excused, you just absolutely cannot say
16 anything about your testimony under any circumstances to any
17 individual. Do not discuss your testimony with anyone.

18 Also, do not -- and be especially careful --
19 do not read any newspaper accounts of this case, and do not
20 watch any television reports of this case nor listen -- nor
21 listen to or read from any other source any media coverage
22 of this case. That is very important, and it is part of the
23 instructions of the Court to you under the Rule of
24 Witnesses.

25 What you need to do is you'll be able to

1 leave the courtroom at this time. Do not come into the
2 courtroom at any time until you are called by the bailiff to
3 testify. You cannot be in the courtroom at any time any
4 other witness is testifying.

5 And I'm sure that the State's attorneys, if
6 you're subpoenaed here as a State's witness, or the defense
7 attorneys, if you're subpoenaed as a defense witness, I'm
8 sure they will let you know when they need you to be outside
9 the courtroom to testify as a witness in the case.

10 Any further instructions, Mr. Bingham?

11 MR. BINGHAM: No, Your Honor.

12 THE COURT: Anything further, Mr Perkins?

13 MR. PERKINS: No, Your Honor.

14 THE COURT: All right. Then if you would,
15 please step out now outside the courtroom.

16 (The witnesses leave the courtroom.)

17 (Open court, defendant present, no jury.)

18 THE COURT: After the Court brings in the
19 jury, Counsel, the Court -- obviously, the record is going
20 to reflect that each of these jurors have already been
21 individually sworn and placed under instructions by the
22 Court. The Court is going to reswear the entire jury as a
23 group.

24 Does either State or Defense have any -- I
25 believe you did make a request that there be an additional

1 instruction reference media coverage; is that right,
2 Mr. Perkins?

3 MR. PERKINS: That's correct, Your Honor.

4 THE COURT: And then the Court, after the
5 jury is sworn, will call for announcements before the jury.

6 (The jury enters the courtroom.)

7 (Open court, defendant and jury present.)

8 THE COURT: Good morning, Ladies and
9 Gentlemen. You may be seated. Thank you.

10 Ladies and Gentlemen, as you well remember
11 and know, the Court earlier -- as each of you were selected
12 and accepted to be a member of this jury, the Court issued
13 you individually the oath that's administered to a juror in
14 the case. Now that you are all together as a group, the
15 Court is going to reissue that oath, so it will be given to
16 you also as a group.

17 If you would, just stand and raise your right
18 hand, please, at this time.

19 You and each of you do solemnly swear that in
20 the case of the State of Texas against the defendant you
21 will a true verdict render, according to the law and the
22 evidence, so help you God?

23 (The jury answers affirmatively.)

24 THE COURT: Thank you. Be seated, please.

25 The Court, in Cause Number 241-0978-04, the

1 State of Texas versus Tracy Beatty will now call for
2 announcements from counsel.

3 MR. BINGHAM: Your Honor, the State is
4 present, and we're ready.

5 THE COURT: Mr. Perkins?

6 MR. PERKINS: Present and ready, Your Honor.

7 THE COURT: Thank you.

8 Ladies and Gentlemen, let me give you these
9 additional instructions since you are now together here to
10 begin hearing evidence in the case. And that is, all of the
11 instructions that the Court gave you individually, of
12 course, still apply now to your jury service in this case
13 and will govern your conduct until such time as your jury
14 duty ends in this case.

15 Also, it's especially important, as are all
16 the instructions, but I want to also caution you to continue
17 to be careful about not reading any newspaper accounts of
18 the case. Don't read any newspaper stories about coverage
19 of the case.

20 Also, be very careful about not watching any
21 television accounts or coverage of the case. And be
22 cautious about avoiding any type of media coverage in any
23 manner about the case, as well as those other instructions I
24 gave you to be careful about not letting anyone discuss the
25 case with you or discussing the case with any individuals.

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1 And if anything like that were to happen,
2 report it to me immediately if someone were to try to talk
3 to you about the case.

4 Any further instructions, on behalf of the
5 State or of the Defense requested, at this time?

6 MR. BINGHAM: Not from the State, Judge.

7 MR. PERKINS: No, Your Honor.

8 THE COURT: Mr. Bingham, do you want to
9 present the indictment?

10 MR. BINGHAM: Yes, sir.

11 THE COURT: The defendant will rise.

12 MR. BINGHAM: "The State of Texas versus
13 Tracy Beatty, Cause Number 241-0978-04, in the name and by
14 the authority of the State of Texas, the Grand Jurors, duly
15 selected, organized, sworn, and impaneled as such for the
16 County of Smith, State of Texas at the January-June term,
17 2004, of the 7th Judicial District Court for said County, a
18 quorum thereof being present, upon their oaths presented in
19 and to said Court that on or about the 25th day of November,
20 2003, and anterior to the presentment of this indictment in
21 the County and the State aforesaid, Tracy Beatty did then
22 and there intentionally cause the death of an individual,
23 namely, Carolyn Click, by strangling Carolyn Click with his
24 hands and pantyhose and a piece of cloth and an object
25 unknown to the Grand Jury, and that the defendant was then

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1 and there in the course of committing or attempting to
2 commit the offense of robbery of Carolyn Click.

3 "And the Grand Jurors aforesaid do further
4 present in and to said Court that on or about the 25th day
5 of November, 2003, and anterior to the presentment of this
6 indictment in the County and State aforesaid, Tracy Beatty
7 did then and there intentionally cause the death of an
8 individual, namely, Carolyn Click, by strangling Carolyn
9 Click with his hands and pantyhose and a piece of cloth and
10 an object unknown to the Grand Jury, and the defendant was
11 then and there in the course of committing or attempting to
12 commit the offense of burglary of a habitation of Carolyn
13 Click, who was the owner of said habitation.

14 "And the Grand Jurors aforesaid do further
15 present in and to said Court that on or about the 25th day
16 of November, 2003, and anterior to the presentment of this
17 indictment in the County and State aforesaid, Tracy Beatty,
18 did then and there intentionally cause the death of an
19 individual, namely, Carolyn Click, by striking Carolyn Click
20 with a hard object and a blunt object and an object unknown
21 to the Grand Jury, and the defendant was then and there in
22 the course of committing or attempting to commit the offense
23 of robbery of Carolyn Click.

24 "And the Grand Jurors aforesaid do further
25 present in and to said Court that on or about the 25th day

1 of November, 2003, and anterior to the presentment of this
2 indictment in the County and State aforesaid, Tracy Beatty
3 did then and there cause the death of an individual, namely,
4 Carolyn Click, by striking Carolyn Click with a hard object
5 and a blunt object and an object unknown to the Grand Jury,
6 and the defendant was then and there in the course of
7 committing or attempting to commit the offense of burglary
8 of a habitation of Carolyn Click, who was the owner of said
9 habitation.

10 "And the Grand Jurors aforesaid do further
11 present in and to said Court that on or about the 25th day
12 of November, 2003, and anterior to the presentment of this
13 indictment in the County and State aforesaid, Tracy Beatty
14 did then and there cause the death of an individual, namely,
15 Carolyn Click, by smothering Carolyn Click with a piece of
16 cloth and pantyhose and his hands and an object unknown to
17 the Grand Jury, and the defendant was then and there in the
18 course of committing or attempting to commit the offense of
19 robbery of Carolyn Click.

20 "And the Grand Jurors aforesaid do further
21 present that on or about the 25th day of November, 2003, and
22 anterior to the presentment of this indictment in the County
23 and State aforesaid, Tracy Beatty did then and there
24 intentionally cause the death of an individual, namely,
25 Carolyn Click, by smothering Carolyn Click with a piece of

1 cloth and pantyhose and his hands and an object unknown to
2 the Grand Jury, and the defendant was then and there in the
3 course of committing or attempting to commit the offense of
4 burglary of a habitation of Carolyn Click, who was the owner
5 of said habitation.

6 "And the Grand Jurors aforesaid do further
7 present in and to said Court that on or about the 25th day
8 of November, 2003, and anterior to the presentment of this
9 indictment in the County and State aforesaid, Tracy Beatty
10 did then and there intentionally cause the death of an
11 individual, namely, Carolyn Click, by suffocating Carolyn
12 Click with a piece of cloth and pantyhose and his hands and
13 an object unknown to the Grand Jury, and by burial in the
14 ground, and the defendant was then and there in the course
15 of committing or attempting to commit the offense of robbery
16 of Carolyn Click.

17 "And the Grand Jurors do further present in
18 and to said Court that on or about the 25th day of November,
19 2003, and anterior to the presentment of this indictment in
20 the County and State aforesaid, Tracy Beatty did then and
21 there intentionally cause the death of an individual, namely
22 Carolyn Click, by suffocating Carolyn Click with a piece of
23 cloth and pantyhose and his hands and an object unknown to
24 the Grand Jury, and by burial in the ground, and the
25 defendant was then and there in the course of committing or

1 attempting to commit the offense of burglary of a habitation
2 of Carolyn Click, who was the owner of said habitation.

3 "And it is further presented in and to said
4 Court that during the commission of each of the
5 above-described felony offenses, the said Tracy Beatty did
6 use and exhibit a deadly weapon, to-wit, hands and piece of
7 cloth and pantyhose and an object unknown to the Grand Jury,
8 that in the manner of its use and intended use was capable
9 of causing death and serious injury, against the peace and
10 dignity of the State," signed by the Foreman of the Grand
11 Jury.

12 THE COURT: To which the defendant pleads?

13 THE DEFENDANT: Not guilty, Your Honor.

14 THE COURT: You may seated.

15 Ladies and Gentlemen, at this time, the
16 State of Texas will make an opening statement. The opening
17 statement is the opportunity of the State of Texas to go
18 into what the State anticipates the evidence in the case
19 will show, what the State anticipates they will prove in the
20 case in terms of witnesses.

21 The statements that are made by Mr. Bingham,
22 who will be making the opening statement, are not evidence.
23 They are his opportunity to tell you what he expects to
24 prove from the evidence in the case.

25 Once Mr. Bingham finishes his opening

1 statement, Mr. Perkins, I anticipate, will make an opening
2 statement to you. Mr. Perkins is not required to make his
3 opening statement at this time.

4 If he wants to, he can reserve his opening
5 statement until after the State rests. But if Mr. Perkins
6 chooses to make an opening statement at this time, it will
7 be the same, in that it would be Mr. Perkins' opportunity,
8 if he desires to do so, bearing in mind that the Defense has
9 no burden of proof, to outline for you, if he intends to do
10 so and wants to make the statement at this time, what he
11 anticipates the evidence in the case will show, bearing
12 again in mind that the statements of neither the prosecutor
13 nor the defense attorney are evidence in the case.

14 The Court will recognize Mr. Bingham for
15 opening statements.

16 MR. BINGHAM: May it please the Court,
17 Mr. Perkins, Mr. Hawk.

18 THE COURT: Ladies and Gentlemen, while
19 that's being set up, let me mention one other matter to you.
20 Mr. Awbrey, our court reporter, who is seated here who you
21 can see, there will be another court reporter sitting right
22 in front of me, Mrs. Kim Christopher, another one of our
23 court reporters.

24 At various times, as we're going to go
25 through the evidence, you're going to see one or the other

1 of them get up and leave. The other will still be taking
2 everything down. They will be coming in and out, so don't
3 let that bother you. There is still a full record being
4 made of everything said in court.

5 All right. Mr. Bingham.

6 MR. BINGHAM: The first thing I want to do is
7 thank you for the sacrifices that you're going to make and
8 that your family is going make for you to serve as a juror
9 in this case.

10 I want to tell you in advance that the
11 evidence you will hear will be horrific, and the pictures
12 you see, I will submit to you, you will probably never
13 forget. The evidence that you will hear will take you back
14 to on or about November 25th, 2003, and this evidence will
15 show that this defendant beat and strangled his own
16 62-year-old mother to death, and he buried her in a shallow
17 grave behind her house that she had lived in alone for over
18 ten years. And he buried her nude, covered in dirt,
19 mothballs, cat litter, and garlic.

20 You will hear from witnesses who the
21 defendant told he killed his mother. They will be from law
22 enforcement officers to witnesses the defendant knew. And
23 you will hear from law enforcement officers that the
24 defendant took to this location on the side of Mrs. Click's
25 house where the defendant walked law enforcement to and

1 pointed to the ground and showed where he had buried his
2 mother. Those witnesses that you will hear from regarding
3 the defendant's admissions to killing his mother will be
4 family members, law enforcement, and people the defendant
5 knew.

6 You will see photographs in this case of
7 where law enforcement unearthed and dug up Carolyn Click.
8 You will see pictures of her contorted, nude decomposing
9 body that was buried 11-1/2 inches under the ground on the
10 side of her mobile home where she had lived alone for years.
11 And you will hear evidence that the person that killed
12 Carolyn Click and buried her in the ground 11-1/2 inches
13 under and covered her with garlic, mothballs, and cat litter
14 is the defendant who's seated right there (indicating).

15 And the evidence you will hear of this will
16 be from his own words that he told witnesses in this case.
17 You will hear witnesses who will take you through Carolyn
18 Click's last days alive on this earth. And you will hear
19 evidence of how the last thing Carolyn Click ever saw was
20 the son she gave birth to killing her.

21 The evidence will show you the last thing
22 Carolyn Click ever felt on this earth were multiple strikes
23 to her body by her own son and the feeling of strangulation
24 upon her body that was being caused by her son.

25 You will hear from witnesses who were with

1 the defendant as he drove her car that he had stolen from
2 her and used her credit cards that he removed from her
3 purse, that he had stolen from her and withdrew money from
4 her bank accounts to buy alcohol and methamphetamine and how
5 he continued to live in her house that she had kicked him
6 out of on the very morning that he killed her and that he
7 did all of this, as his mother lay nude and buried in her
8 backyard.

9 You will hear evidence in this case that will
10 take you through a time line of capital murder. You will
11 hear that the defendant had moved in with his mother about a
12 month before her death. You will hear that the defendant is
13 over 40 years of age and that the victim in this case was
14 22 -- excuse me -- 62.

15 You will hear that he moved in with his
16 mother about a month before her death and on -- the last day
17 that anyone ever saw Carolyn Click alive was November 25th,
18 2003.

19 And you will hear that on November 25th,
20 2003, Carolyn Click came over to a neighbor named Betty
21 McCarty. That was about 4:00 o'clock on the 25th of
22 November, 2003. She came over and told Betty McCarty that
23 she, Carolyn Click, had told her son that morning to leave
24 her house. She said she was tired of his attitude towards
25 her and that she had had enough. 4:00 o'clock on that day

1 was the last time anyone ever saw Carolyn Click alive.

2 You will hear that the victim, Carolyn Click,
3 had lived at this residence for the last ten years. And you
4 will hear that on October 2nd, 2003, the victim allows her
5 son, the over-40-year-old defendant in this case, to move in
6 with her.

7 On November 4th, 2003, you will hear evidence
8 that the victim actually tells the defendant to leave her
9 residence. That's November 4th. That's 21 days before her
10 life is over. She tells the defendant to leave her
11 residence.

12 The defendant stays at a neighbor's house
13 across the street by the name of Lieanna Wilkerson he stays
14 there for about a week before he moves back in with his mom.
15 You will hear that on November 18th, 2003, now about a week
16 before his mother is killed, the defendant makes the
17 statement to this neighbor, Lieanna Wilkerson, and the
18 statement he tells her is that he was working around the
19 mobile home with his mom, and he tells Lieanna Wilkerson,
20 "She actually handed me a hammer."

21 And he goes on to tell Lieanna Wilkerson that
22 "when she handed me the hammer, I thought to myself, I can't
23 believe she's handing me that hammer." And he said he had
24 thoughts of hitting her with that hammer and burying her
25 body underneath the mobile home, but that if he knew he did

1 that, she would start to stink, and he would be found out.
2 That's a week before he takes the life of his mother by
3 choking her and strangling her and beating her and
4 suffocating her.

5 On November 25th, 2003, as I told you before,
6 Betty McCarty sees the victim at 4:00. Betty McCarty is
7 unloading groceries that she had just purchased. The victim
8 comes over and tells Betty, "I've had enough. I told my son
9 to leave my house this morning." That's the last statement
10 anyone ever hears Betty McCarty (sic) make. That's the last
11 time anyone ever sees her alive on this earth.

12 The defendant, sometime before dark, drives
13 his mother's car. And up to this point -- up to this point,
14 no one has ever seen this defendant right here (indicating)
15 drive his mother's vehicle. As a matter of fact, the
16 evidence will show you, when he went to take his driving
17 test sometime after moving in with his mom, he didn't use
18 his mom's car. He had to use Lieanna Wilkerson's car.

19 On November 25th, 2003, as he continued to
20 live in her house that she's buried behind on the day he
21 kills her, and on November 25th, 2003, as he drives her car
22 that no one has ever seen him drive before, as she lay
23 buried or dead, he drives her car to Stacey Killough's,
24 house. Stacey Killough is a relative of his.

25 He tells Killough the victim has gone away

1 with a truck driver for two weeks. And as you will find out
2 from the evidence, that's a lie. She's gone, and her body
3 is buried behind the mobile home.

4 So the defendant leaves Stacey Killough's
5 house. He comes there, and Stacey is like, "Look, I'm very
6 busy. I'm getting my kids ready. Their father is coming to
7 pick them up." It's two days before Thanksgiving, and she's
8 getting them ready to go. And she says, "Can you just come
9 back later?" And the defendant has been drinking. And he
10 leaves.

11 The defendant then goes back to Lieanna
12 Wilkerson's house across the street, across the street from
13 where his mother is buried. And Lieanna Wilkerson at
14 sometime, 7:00 on, cooks him a spaghetti dinner, and the
15 defendant drinks a bottle of wine.

16 He leaves at 10:00 o'clock, and he goes back
17 to the victim's house, despite the fact that she had kicked
18 him out that morning and despite the fact that her body lays
19 behind that house.

20 The defendant later calls Wilkerson. Since
21 this offense has occurred, the defendant has actually called
22 Lieanna Wilkerson, and he has called her since being charged
23 with this crime, and he has admitted to her that "on the day
24 you cooked me that spaghetti dinner, that was the day I
25 killed my mother."

1 On November 25th, 2003, the defendant begins
2 driving the victim's car that no one has ever seen him drive
3 before. On November 26th, the defendant takes a
4 Thanksgiving turkey over to Lieanna Wilkerson's house saying
5 to her, "Mom is gone, so she won't need it."

6 He tells Wilkerson, the next-door neighbor to
7 the victim, that the victim has gone with her boyfriend and
8 that he won't be back until -- that she won't be back until
9 December 17th. He says she left because she couldn't deal
10 with him anymore.

11 On November 27th, the next day, Thanksgiving,
12 the defendant eats Thanksgiving dinner at another neighbor's
13 house named Twyla Johnson. Twyla Johnson, Lieanna
14 Wilkerson, and another neighbor and the defendant come over
15 to Ms. Johnson's house for Thanksgiving dinner.

16 Wilkerson notices the defendant is very
17 nervous, and he keeps looking back at his mother's house.
18 He leaves saying he's going to go visit some relatives in
19 Athens, and he does leave, again in the victim's car, still
20 living in her home. And the defendant goes to another --
21 goes back to Stacey Killough's house, his relative, who
22 lives outside of Smith County.

23 Stacey Killough sees on the defendant a huge
24 wad of money, a huge wad of money in the pocket of the
25 defendant who's over 40 living with his 62-year-old mother

1 with no vehicle. And the reason she sees the money is
2 Stacey Killough is sick, she's got a cold, or whatever she
3 has.

4 Her husband, Michael, is going to go to a
5 liquor store and buy some liquor. And she says, "Don't buy
6 a big bottle." And Tracy Beatty pulls out this big wad of
7 money that she describes like this (indicating) and says,
8 "Don't worry. I'm getting it. I'm going to pay for it."
9 And he and Michael Killough leave and go to the liquor
10 store. This is two days after his mother's death.

11 On November 28th, the defendant uses the
12 victim's gas card for the first time, and you'll hear the
13 custodian of records from the DSRM bank. His mother is
14 dead. The defendant is driving her vehicle, and it's the
15 first time documented that he uses her gas card.

16 The defendant goes to John Clary's house.
17 John Clary is a relative. He's a marine. Hasn't seen the
18 defendant; hasn't had any contact with the defendant for 12
19 years. Hadn't thought about him; hadn't seen him; hadn't
20 talked to him for 12 years.

21 The defendant goes to his house. Mr. Clary
22 will tell you he shows up in the victim's car, and he's
23 drunk, and Mr. Clary asks the victim (sic) where Carolyn
24 Click is, "Where is your mother?"

25 And the defendant tells him, well, the

1 victim -- excuse me -- the defendant tells him that the
2 victim is out of town with her boyfriend who's a truck
3 driver. That's not true. She's buried in her backyard
4 behind her mobile home house.

5 The defendant disappears, basically, from the
6 27th through the 29th. On November 29th, the defendant
7 tells Wilkerson that has done so much dope with his friends,
8 that it's taken him two days to recover.

9 The evidence will show you that the money
10 that's being used to purchase that dope, and it's a
11 reasonable inference from the evidence, wasn't the
12 defendant's; it was Carolyn Click's.

13 On November 30th, the defendant goes back to
14 John Clary's house, again drunk, about 9:30 p.m. Mr. Clary
15 will not let the defendant in his house, and he tells the
16 defendant, "You have to leave."

17 And the defendant, standing by the victim's
18 car -- excuse me -- by the victim's car in John Clary's
19 driveway says -- excuse this. This is the evidence. Excuse
20 my language -- "I fucked up this time. I killed the bitch."
21 And then he tells him this: That the 62-year-old Carolyn
22 Click "pulled the gun on me, and I had to take the gun away
23 from her and I choked her."

24 Now, John Clary says, "Well, then you need to
25 go to the police." And the defendant says, "I can't go

1 back. She might call the cops on me." John Clary doesn't
2 understand this statement. "If she's dead, how is she going
3 to call the cops on you?" The defendant is intoxicated.
4 Clary tells him to leave.

5 You will later learn, and we'll talk about
6 this in opening statement further, that's a lie. The
7 defendant was -- the victim never pulled a gun on the
8 defendant. And by the end of this -- of all of the
9 evidence, the defendant would have told six stories of what
10 happened on November 25th, 2003.

11 On December 11th, the defendant meets a girl
12 named Renee Loomis, who's a dope addict. He meets Loomis at
13 the house of one of his friends, Linda Trotter. Loomis and
14 the defendant are together for three days. And they are in
15 the victim's car; they are drinking.

16 They are using methamphetamine that's being
17 purchased with an ATM card belonging to Carolyn Click that I
18 believe comes in the mail after Carolyn Click is dead and
19 using the gas card that is later found on the -- in the
20 defendant's personal property.

21 And they're driving around, and they're
22 drinking, and they're going in and Pulsing \$75, \$300 of the
23 dead mother's money. And the evidence will show you the
24 defendant is so distraught about it that he decides to go
25 out and purchase some methamphetamine and alcohol. The

1 defendant takes Loomis and one of her friends, Melissa
2 Southern, to the victim's house.

3 The defendant puts them in the car, they get
4 into the victim's car, and he drives them to Carolyn Click's
5 house. And he says -- tells them that this is his aunt's
6 house, who recently died, and he inherited the house. And
7 he begins to give them property belonging to Carolyn Click.

8 The defendant later tells Renee Loomis now
9 yet another story. He says -- he tells her, "I had a friend
10 kill my mom, and then I killed my friend, so there would be
11 no witnesses, and I buried their bodies in Cedar Creek or at
12 Cedar Creek." So yet there's another story. It's gone from
13 she's on a vacation to she pulled a gun to "I had a friend
14 kill her, and then I killed the friend."

15 But it won't end there. The defendant goes
16 to -- and Loomis go to a man's house by the name of Aaron
17 Sisk where Melissa Southern is staying. It's out at Pine
18 Trail Shores. He's still driving the victim's car.

19 At that location, he tells Melissa Southern
20 and some of the other people that he wants to sell Carolyn
21 Click's car, and he makes a sign and posts it on her car to
22 sell it. And he goes from like 800 to 600 to \$400. And he
23 adds guess what to the car? The evidence will show you the
24 title. And He throws the title at Melissa Southern, and he
25 says, "Sell it. Do what you can for me" on the car.

1 And he burns property belonging to the victim
2 in a burn pile behind that house, property like clothing and
3 purses. And he tells -- the defendant tells Melissa that
4 same "I killed the punk who killed my mom, and I buried
5 their body in the woods." And then he goes on to make a
6 statement that says, "You better be sure that I buried my
7 mom a lot deeper than I did that other punk. Maybe the
8 woods will eat him."

9 On December 17th, Roy Tomlin with the Smith
10 County Sheriff's Department goes to the victim's house and
11 speaks to the defendant who's still living there about the
12 victim being missing.

13 And the defendant then gives yet another
14 story. He says his mother is with a guy named Junior in
15 Jacksonville, Texas, and that she should be back the next
16 day on the 18th.

17 On December 18th, the Smith County Sheriff's
18 Office receives an anonymous call that the car -- the
19 victim's car has been seen at Pine Trail Shores. They go
20 out there and confirm the car's location there at Aaron
21 Sisk's house -- at the house of Aaron Sisk, and they get a
22 warrant to search the car, and they seize the car.

23 On December 19th, Pat Hendrix gets consent --
24 he's with the Sheriff's Department -- from Aaron Sisk to
25 search the burn pile behind Mr. Sisk's house, and they

1 collect evidence. Detectives Pat Hendrix and Frank Blake
2 interview the defendant, Tracy Beatty, on December 19th, and
3 the defendant tells them, hey, the victim is okay. "Don't
4 worry. She's okay. She's with Junior."

5 The defendant says the victim has come back
6 recently and picked up her car, the car he's got sitting out
7 at Pine Trail Shores with a for sale sign on it. Picked up
8 her car and some of her belongings on Wednesday, the 17th,
9 so he knows she's okay.

10 Well, immediately, what does Pat Hendrix say,
11 "No" -- who's just seized the car from Pine Trail Shores?
12 The evidence will show you Pat Hendrix says, "He's lying. I
13 know she doesn't have the car. We have it."

14 The defendant never mentions anything to law
15 enforcement on the 19th -- never, zero, at no time does he
16 ever mention anything to them about hiring a man to kill his
17 mother or Junior killing his mother. He says, "Hey, she's
18 okay. Relax. Relax. She's in Jacksonville."

19 And the defendant tells law enforcement he
20 hasn't seen his mother since Thanksgiving. The defendant
21 admits to using her money and draining her account to smoke
22 dope, to buy and use methamphetamine.

23 And in the interview, the law enforcement
24 officers know some things, and they say, "You know, we have
25 information that maybe you've buried your mother." And he

1 goes, "Buried. Why would you say buried?" Interview over.

2 December 23rd, Smith County Sheriff's Office
3 deputies bring a cadaver-sniffing dog, and they start from
4 Shreveport, Louisiana, from a team down there, and they
5 begin to search locations in Henderson County.

6 Beatty then agrees to an interview with
7 Investigators Ray Nutt and Ron Shields. And during the
8 interview, guess what? See, on the 19th when he said, "Hey,
9 she's with Junior," remember, Pat Hendrix was interviewing
10 her (sic) on the 19th. He tells Pat Hendrix, "Hey, she's
11 with Junior. She's okay. She came back on the 17th to pick
12 her car. Hey, don't worry about it."

13 Pat Hendrix asks the defendant, "Do you think
14 Junior would hurt her?" Well, nowhere in that interview
15 does he ever mention anything about Junior hurting him
16 (sic). But the evidence will show you it puts something in
17 his mind.

18 And on the 23rd, he's talking to
19 Investigators Ray Nutt and Ron Shields, and Beatty says to
20 them, "Junior killed the victim." Here we go. Story
21 Number 4. "Junior killed the victim, so I killed Junior."

22 The defendant then states, "I dumped the
23 bodies in the lake." The defendant says, "You know what?
24 I'll take them to the bridge where I dumped the bodies." So
25 they say, "Good. Let's go." They take him out there. Do

1 you think they found any bodies? The evidence will show you
2 they did not. No bodies were located.

3 The defendant then admits for the first time
4 to burying his mom behind her house, finally. She's been
5 there a month. Smith County deputies go to the victim's
6 house where the defendant is still living, now the
7 defendant's house because Carolyn Click is dead, buried back
8 there on a corner of her house behind the fence with lumber
9 and cat litter stacked on top of dirt, which is stacked on
10 top of moth balls and garlic, nude, contorted, with her face
11 covered with a towel and pantyhose.

12 And the pantyhose are on her face. The legs
13 of the pantyhose are wrapped around her neck tight, three
14 times, and tied in a knot. And that's where she's been the
15 past month while he's been out doping and drinking and
16 spending her money and driving her car and living in her
17 house.

18 So they take him back there. He points out
19 to where the body is buried. Detective Noel Martin digs up
20 her body, which is nude, 11 and a half inches under the
21 ground.

22 Well, the defendant is interviewed by Pat
23 Hendrix on the 23rd. And he tells Pat Hendrix, "Well, I
24 found my mother laying dead inside her house." Here we go.
25 Story Number 5. "I found my mother laying dead in her

1 house. As I was leaving the victim's house, I went to look
2 for Junior."

3 Now, he says that as he was driving away from
4 the house, Junior -- towards the house, Junior was driving
5 away. And he describes turning around and confronting
6 Junior in the yard and that he stabs Junior to death because
7 Junior killed his mom and maintains that he -- continues to
8 maintain that he dumped the body -- Junior's body under the
9 bridge in Cedar Creek somewhere.

10 So on the 26th of December, to be completely
11 thorough, guess what law enforcement does? The evidence
12 will show you they load up again and head to Cedar Creek.
13 And no body is found. What investigators learn later is
14 there is no body of this Junior. Junior didn't kill his
15 mom.

16 How did they find out that Junior didn't do
17 this, and there is no body of Junior? Because the defendant
18 admits to him that he's the one that killed his mom, after
19 all of this.

20 On December the 29th, Pat Hendrix obtains an
21 arrest warrant for the offense of capital murder. On
22 December 30th, Detectives Pat Hendrix and Sean Parrish are
23 with the defendant, and the defendant says spontaneously,
24 "You know, I didn't mean to kill her. I came in drunk, and
25 she started bitching, and I just start choking her. Hell,"

1 he says, "I didn't even know she was dead until the next
2 morning when I saw her laying on the living room floor."

3 Well, he also makes some other admissions.
4 During the book-in procedure, after he's been arrested on
5 this offense, the defendant tells a Smith County jailor --
6 he says this -- here we go again. He says, "I was on drugs
7 the night I killed her. I had been up for four days."

8 He tells the jailor that while he was high on
9 dope or been up for four days after being on dope, "I'm
10 drinking a fifth of whiskey. My mom grabs him" -- he says,
11 "My mom grabs me and pulls the bottle away from me." It's
12 at this point he states that he grabbed the victim until she
13 became limp. Then he just went to bed. He realized there
14 might be a problem the next morning when the victim was
15 still laying on the floor where she had fallen.

16 During the same time period, the defendant's
17 with a -- next to an inmate by the name of Michael Hibbler,
18 and the evidence will show you -- do you know how many deals
19 we made with Michael Hibbler? None. None. Has nothing
20 pending here. No deals.

21 But he's going to come in, and he's going to
22 tell you this: The defendant -- he's by the defendant, and
23 the defendant told him that he had come home, and his mom
24 had confronted him at the front door. I mean, how dare she
25 confront him in her home. He states that the victim started

1 a physical confrontation with him and that the victim had
2 been drinking.

3 And the evidence is going to show you that
4 the victim has a .05 ethanol in her system. What the
5 pathologist is also going to tell you is that upon
6 decomposition of a body, bacteria begins to form a substance
7 that reads for ethanol..

8 And it's very consistent in autopsies, where
9 there is this level of decomposition, to have a .05 or .07
10 ethanol reading in your system, consistent with showing that
11 she had been drinking when, in fact, it's the bacteria that
12 forms during the decomposition stage.

13 But he says, "I come home. My mom confronts
14 me." He starts -- she starts a physical confrontation with
15 him, and he pushes the victim, and she falls, hitting her
16 head on the coffee table. The pathologist will tell you
17 that's a lie.

18 He says he went to sleep and saw his mom on
19 the floor the next morning and that according to the
20 defendant, he leaves the body there, goes through the house
21 taking cash and property, is what he told Michael Hibbler.

22 Since the evidence will show you he has
23 killed his 62-year-old mom and buried her nude in a hole in
24 the backyard with moth balls, cat litter, and garlic, the
25 evidence will show you the defendant has told six different

1 versions of how his mother died.

2 One, she's okay; she's traveling with Junior;
3 she'll be back on the 18th. That's one.

4 The evidence will show you the second story
5 is that his mother pulled a gun on him; he took the gun away
6 from her and choked her.

7 Story Number 3. He had Junior kill her, then
8 he killed juror, and he buried both of them in Cedar Creek.

9 Story Number 4. He found Junior killed his
10 mother, then he killed Junior, buried his mom in the
11 backyard and dumped Junior in the lake.

12 Story Number 5, that he was on dope and
13 drunk, his mom grabbed the bottle away from him, and he
14 choked her. Then he got up the next day, and she had not
15 moved.

16 Story Number 6, that the victim started a
17 physical confrontation with him, that she had been drinking,
18 he pushed her, and her head hit a table, and he thought
19 something might be wrong when she didn't move.

20 The evidence will show you that one person
21 took them to where the body was buried -- law enforcement --
22 under the ground: The defendant.

23 The evidence will show you that Junior did
24 not kill her. The defendant admitted to Lieanna Wilkerson,
25 John Clary, Fabian Arteaga, Michael Hibbler, Detective Pat

1 Hendrix, Detective Sean Parrish, he admitted to all of them
2 that he killed his mother.

3 The evidence will show you that she's not
4 buried out by Cedar Creek. She was found buried in a hole
5 in her own backyard at the house she had lived in for ten
6 years.

7 The evidence will show you that he did not
8 just choke her and wake up the next day and notice she
9 hadn't moved. The evidence will show you that he did not
10 just push her and her head hit a table.

11 What the evidence will show you is that this
12 defendant intentionally took the life of his mother, and he
13 buried her body nude in the backyard, and he did this with
14 the intent of robbing and burglarizing her, and he took her
15 personal property, lived in her home, took her car and took
16 her money.

17 You will hear evidence from which you can
18 rationally conclude that the defendant formed the intent to
19 obtain the victim's property either before or during the
20 commission of the murder and that the murder occurred in the
21 course of robbing or burglarizing Carolyn Click and that the
22 appropriation of her property, her car, her home, her money
23 occurred the day the murder occurred and continued
24 thereafter.

25 The evidence will show you when -- the day

1 Carolyn Click died, November 25th, 2003, that was the very
2 day that she told this defendant, "You can no longer live on
3 my property. You can't drive my car. You can't eat my
4 food. You can't use my money." The evidence will show you
5 he killed her with the intent to rob and burglarize her.

6 You will hear from Dr. Dolinak, the deputy
7 chief medical examiner of Dallas County at the Southwest
8 Institute of Forensic Sciences. Dr. Dolinak will tell you
9 this was an intentional crime. It was an intentional
10 murder.

11 Dr. Dolinak will tell you Carolyn Click was a
12 62-year-old female weighing 131 pounds, standing 5 feet 5
13 inches tall; that she was strangled; that she had numerous
14 blunt force injuries to her head, her torso, and her arms;
15 that she had a sponge-like cloth wrapped over her face,
16 which in turn had a pantyhose ligature wrapped tightly
17 around Carolyn Click's neck three times.

18 He will tell you that in his opinion, this
19 was an intentional act, not only due to the fact that she
20 had multiple injuries all over her body, but she had a
21 fractured sternum. She had a hyoid bone in her neck that
22 was fractured. She had a bilateral fracture of her thyroid
23 cartilage. She had cracked ribs. She had numerous blunt
24 force injuries on her head. Her hands and her arms had
25 blunt force injuries.

1 And you'll see the pictures of when he cut
2 her arm open, what those injuries are. Defensive wounds.
3 And he believes -- Dr. Dolinak will tell you, in his
4 opinion, it's not just an intentional act just because of
5 the extensive trauma to different parts of her body, but
6 also to the fact that she has pantyhose wrapped three times
7 around her neck.

8 The evidence will show also show you that in
9 1991, this defendant took his hand and struck his mother in
10 the face. Then the evidence will show you that on November
11 25th, 2003, he could have left. He had done it before.
12 Gone to Lieanna Wilkerson's house. He could have just
13 walked away. The evidence will show you the very day that
14 Carolyn Click told her son to leave, she was never seen
15 again.

16 Ladies and Gentlemen, the evidence you will
17 listen to in this case will be horrific, shocking, sad.

18 I appreciate in advance for your service in
19 this case and for listening to the evidence in what is a
20 very important case for the State of Texas, the District
21 Attorney's Office, and the family members of the victim.

22 Thank you very much.

23 THE COURT: Mr. Perkins.

24 MR. PERKINS: May it please the Court.

25 THE COURT: Yes.

STEVE R. AWBREY, CSR
241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

1 MR. PERKINS: Counsel for the State.

2 Ladies and Gentlemen of the Jury, listen to
3 me when I say this: Tracy Beatty is guilty. Tracy Beatty
4 is guilty. He's guilty of unauthorized use of a motor
5 vehicle, he's guilty of credit card abuse, he's guilty of
6 debt card abuse, he's guilty of theft, and he's guilty of
7 murder. The evidence is going to show you that he's guilty,
8 guilty, guilty, guilty of all of that stuff. You know what
9 he's not guilty of? Capital murder.

10 What the evidence is going to fail to show
11 you is, is that there's any concausal connection between
12 this theory of robbery, this theory of burglary, and the
13 murder. The State has laid out for you six different
14 stories that Tracy Beatty has told. Tracy Beatty is guilty
15 of lying to the police; he's guilty of using drugs.

16 The State of Texas is guilty of getting those
17 mixed up with a capital murder. The fact that somebody is a
18 drug user, the evidence is going to show you, doesn't
19 constitute capital murder. The fact that somebody is guilty
20 of lying to the police doesn't constitute somebody is guilty
21 of capital murder. The fact that somebody is a bad guy and
22 does bad things does not equal capital murder.

23 What you're going to hear is this: Tracy
24 Beatty and his mother have had a stormy relationship for a
25 long, long time. He lived with her, didn't live with her,

1 you know, out of the house, back in the house, whatever. If
2 there's any evidence, as Mr. Bingham told you, "You can't
3 use my car; you can't spend my money." If there's anybody
4 that comes in here and says that, it will be a shock to me.
5 There's not going to be any evidence of that. There's not
6 going to be any evidence of that, and what he said isn't
7 evidence. You watch and see. There's not going to be any
8 evidence of that.

9 Tracy Beatty is guilty of a lot of things.
10 Tracy Beatty was living with his mother for about a month or
11 so, okay? At some point in time, Tracy Beatty was out of
12 the home, and then he was back in the home, whatever. He
13 was in the home; he had permission to live in the home; he
14 had been living in the home; and he moved back and continued
15 to live in the home.

16 At a point subsequent to that, Carolyn Click
17 is dead. And then Tracy Beatty starts lying to anybody and
18 everybody about how it goes. And remember those six
19 stories? Only one of them is the truth, and I believe it
20 was Mr. Bingham's Number 5 story. One story is the truth.

21 Tracy Beatty and his mother got into a fight.
22 He strangled his mother. They got into a brutal fight, and
23 he killed his mother. And then about -- oh, let me think --
24 two weeks or so after that, her debit card comes in the
25 mail. The evidence is going to be that this debit card

1 wasn't even mailed from the bank. And I don't know how many
2 of you get things mailed to you. Here's a credit card;
3 you're preapproved, that kind of stuff. Unfortunately, we
4 get them a lot.

5 One of these things comes about two weeks
6 after Carolyn Click is dead, and Tracy Beatty and one of the
7 State's witnesses, Renee Loomis, get on that. Renee Loomis
8 activates the card, and they start dumping out her account.
9 Guilty of debit card abuse. That doesn't equal capital
10 murder.

11 The theory -- and I want you to understand
12 that the evidence is going to show you -- and what
13 Mr. Bingham says, just like what I say, is not evidence.
14 But what Mr. Bingham says is, and it's very carefully
15 crafted, nobody had ever seen him use the car until after
16 she was dead. That may be the case. That may be the case.

17 For him to be guilty of capital murder, the
18 intent to commit robbery or burglary, as alleged against
19 him, has to be formulated prior to or concurrently with the
20 murder. Robbery of what? Burglary of what?

21 Ladies and Gentlemen, I'm going to ask you to
22 do this, and to do what each of you individually promised us
23 that you would do in jury selection: Make your decision
24 with your heads and not with your hearts. Do not be guilty
25 of making a decision based on emotion and horrible pictures

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1 and that kind of thing. Do what the law requires you to do.
2 Find Tracy Beatty guilty of what he did. The evidence will
3 show you that he is guilty of a lot of things. He is not
4 guilty of capital murder.

5 Thank you.

6 THE COURT: Thank you, Mr. Perkins.
7 Carleton, would you move the stand?

8 THE BAILIFF: Yes, sir.

9 THE COURT: Call your first witness,
10 Mr. Bingham.

11 MR. BINGHAM: Judge, the State would call
12 John Clary.

13 THE COURT: John Clary, Carleton.

14 MR. BINGHAM: Could I get my notes on the
15 podium I left?

16 THE COURT: Yes, you may.

17 (The witness enters the courtroom.)

18 MR. HAWK: Judge, can we approach briefly?

19 THE COURT: Yes, you may.

20 Has this witness been sworn? Just a second.

21 Mr. Clary, have you been previously sworn as
22 a witness?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. Just have a seat,
25 please.

1 If you would, sort of pull that chair up
2 where you're pretty close to the microphone. That will
3 work, so if you'll stay close to it.

4 (At the bench, on the record.)

5 MR. HAWK: Judge, there's a person in the
6 courtroom named James Clary who may later testify.

7 MR. BINGHAM: He's not going to testify.
8 That's the victim's brother. We're not going to call him.

9 MR. HAWK: That's the victim's brother, and
10 we may be calling him as a witness, so...

11 MR. BINGHAM: Okay. We weren't intending to,
12 so I didn't ask him to leave.

13 THE COURT: Well, then if you know who he is,
14 then, Mr. Bingham, would you please ask Ms. Sikes to get him
15 out of the courtroom, please --

16 MR. HAWK: Thank you, Judge.

17 THE COURT: -- and have him sworn as a
18 witness as soon as we get to a break. Just ask him to --

19 MR. BINGHAM: Okay. We weren't going to call
20 him, so I didn't ask him to leave. I didn't know they were
21 going to.

22 MR. HAWK: And please understand that I'm not
23 saying that the State left him in here intentionally.

24 MR. BINGHAM: No. I understand.

25 THE COURT: Are you telling the Court you may

1 call him as a witness?

2 MR. HAWK: Yes, Judge. Thank you.

3 (End of bench conference.)

4 THE COURT: Proceed, Mr. Bingham.

5 MR. BINGHAM: Thank you.

6 JOHN CLARY,

7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BINGHAM:

10 Q. Mr. Clary, how are you doing this morning?

11 A. Doing well.

12 Q. Thank you.

13 If you would, introduce yourself to the jury
14 by telling them your name and spell your name for the court
15 reporter, because she has to take everything down.

16 A. My name is John Clary. That's C-L-A-R-Y.

17 Q. Okay. Mr. Clary, if you would, tell the jury what
18 you do for a living.

19 A. I'm in the military.

20 Q. Okay. What branch of the military?

21 A. Marine Corps.

22 Q. And how long have you been in the Marine Corps?

23 A. 19 and a half years.

24 Q. Okay. And what is your current rank in the Marine
25 Corps?

1 A. I'm a master sergeant, which is an E-8.

2 Q. Okay. Are you the one in the movie that yells at
3 everybody?

4 A. There you go. That's lower than me.

5 Q. You can tell I've not been in the military, but we
6 appreciate your service.

7 A. Thank you.

8 Q. How are you related to Tracy Beatty?

9 A. First cousins.

10 Q. Okay. Do you see the person you know as Tracy
11 Beatty in the courtroom today?

12 A. Yes, sir.

13 Q. Could you point to him and identify for the Court
14 and for the jury something he's wearing by describing an
15 article of clothing?

16 A. The dark blue tie with the polka dots or with the
17 white dots on it (pointing).

18 Q. Okay.

19 A. Gray hair.

20 MR. BINGHAM: Your Honor, if you would let
21 the record reflect that he pointed to the defendant and
22 identified an article worn by the defendant.

23 THE COURT: The record will reflect the
24 witness has identified the defendant.

25 MR. BINGHAM: Okay.

1 Q (By The Court) How long prior to December -- or
2 excuse me -- November of 2003 had it been since you had
3 seen, a number of years, Tracy Beatty?

4 A. Approximately -- probably about ten years.

5 Q. Now, tell the jury --

6 MR. BINGHAM: Judge, may we approach the
7 witness briefly with Mr. Hawk or Mr. Perkins and say
8 something real quick? It's something I overlooked.

9 THE COURT: Yes.

10 MR. BINGHAM: Mr. Perkins. I'm sorry. Real
11 quick. It's something I overlooked.

12 THE COURT: Yes.

13 (Off-the-record discussion.)

14 MR. PERKINS: That's fine.

15 MR. BINGHAM: If I may have one moment. I
16 had to inform Mr. Perkins what I was going to say.

17 THE COURT: Yes.

18 MR. BINGHAM: Thank you, Judge. That was
19 pursuant to some Court's orders.

20 Q (By Mr. Bingham) When did you first see the
21 defendant in Thanksgiving of 2003?

22 A. It was the day after Thanksgiving.

23 Q. And that would have been the 28th?

24 A. 27th, 28th.

25 Q. Okay. But you knew it to be the day after

1 Thanksgiving?

2 A. Yes.

3 Q. Okay. And what time did he show up?

4 A. It was probably around 7:00 o'clock at night.

5 Q. Now, where did you live -- where did you live at
6 that time?

7 A. In Eustace.

8 Q. And how far is that from Tyler?

9 A. About 45 miles.

10 Q. Okay. What county is that in?

11 A. Henderson.

12 Q. Who did you reside there with?

13 A. My family lives there.

14 Q. Okay. And that would be your wife and your two
15 daughters?

16 A. Yes, sir.

17 Q. Was there anyone else living there with you at the
18 time?

19 A. Yes, sir. My former daughter-in-law was staying
20 with us.

21 Q. Okay. Tell the jury -- the defendant showed up
22 about 6:00 or 7:00. Do you know how the defendant arrived?

23 A. He was driving a car, a white little station
24 wagon, kind of like a panel van. It had the wood panels on
25 the side of it.

1 Q. And had you ever seen that vehicle before?

2 A. No, sir.

3 Q. Could you tell the defendant's mental state when
4 he arrived?

5 A. His mental state was -- he had been drinking.

6 Q. Okay.

7 A. He was pretty inebriated.

8 Q. Okay. And at the time that he arrived and you
9 noticed he was inebriated, what was the defendant talking to
10 you about?

11 A. Just family ties and the need for them to be
12 stronger.

13 Q. Okay. He wanted the -- he was saying your family
14 should have been -- should have stuck together, been closer?

15 A. Yes, sir.

16 Q. Now, did the defendant bring with him any alcohol
17 that you observed?

18 A. Yes, sir.

19 Q. Okay. Where was that?

20 A. It was in the car.

21 Q. Okay. Now --

22 MR. BINGHAM: May I approach the witness,
23 Judge?

24 THE COURT: Yes, you may.

25 Q (By Mr. Bingham) Let me show you State's

1 Exhibits 1 and 2, even though the 2 is upside down. Do you
2 recognize those?

3 A. Yes, sir.

4 Q. What is State's Exhibits 1 and 2?

5 A. That's the vehicle that was being driven that
6 night that he was driving.

7 Q. Okay. He being the defendant?

8 A. Yes, sir. I'm sorry. That Tracy was driving.

9 MR. BINGHAM: I'll show State's Exhibit 1 and
10 2 to Mr. Perkins.

11 MR. PERKINS: Are you offering them?

12 MR. BINGHAM: We are going to offer them.

13 MR. PERKINS: No objection.

14 THE COURT: Are you offering them,
15 Mr. Bingham?

16 MR. BINGHAM: I am, Judge.

17 THE COURT: State's Exhibit Number 1 and
18 State's Exhibit Number 2 admitted without objection.

19 Q (By Mr. Bingham) Now, this -- let me show you
20 State's Exhibit Number 1. I'll turn it like this so the
21 jury can see it. This is the vehicle that Tracy Beatty was
22 driving when he came to your house inebriated?

23 A. Yes, sir.

24 Q. I believe State's Exhibit Number 2 is the other
25 side of that vehicle; is that correct?

1 A. Yes, sir.

2 Q. Now, in that vehicle, did you notice where the
3 defendant had the alcohol?

4 A. No, sir. I didn't go out to the car.

5 Q. Did you allow the defendant to come in to your
6 home?

7 A. Yes, sir.

8 Q. Did he make any statements about driving the
9 victim's vehicle?

10 A. Yes, sir, that he had borrowed it.

11 Q. Okay.

12 A. And was -- because he was borrowing it while
13 Carolyn was gone so he could feed the dogs and go see his
14 daughter.

15 Q. Now, did you make in inquiry of him as to where
16 Carolyn Click was?

17 A. No, sir.

18 Q. Did he mention to you where Carolyn Click was?

19 A. No, sir.

20 Q. Did he give you an explanation for where she might
21 be?

22 A. No, sir.

23 Q. Now, how long did the defendant stay?

24 A. Approximately an hour and a half.

25 Q. Okay. And at that point -- so he leaves about

1 8:30?

2 A. Yes, sir.

3 Q. Do you see him again any time after that?

4 A. Couple of days later.

5 Q. Okay. How many days after Thanksgiving was that?

6 A. It would have been three days after.

7 Q. So on the -- what was that, the 29th?

8 A. Yes, sir, the 30th, 31st.

9 Q. Okay. What time did he show up that day?

10 A. It was probably around 9:00 o'clock that night.

11 Q. Now, how long had it been since you had seen

12 Carolyn Click?

13 A. '95.

14 Q. Okay. How did you know Carolyn Click to be
15 related to Tracy Beatty?

16 A. That's his mother.

17 Q. When he showed up three days after Thanksgiving,
18 how did he arrive at your house?

19 A. Driving the same car.

20 Q. Could you tell whether or not he had been
21 drinking?

22 A. Yes, sir, he had been. He had beer in his hand
23 when he showed up.

24 Q. Now, did you allow the defendant into your home?

25 A. No, sir.

1 Q. Did the defendant make any statements to you that
2 you thought were unusual?

3 A. Yes, sir.

4 Q. Okay. Tell the jury what the defendant said and
5 what you replied.

6 A. Well --

7 Q. When the defendant came up to you, did he make any
8 statements about his mother and what had happened?

9 A. Yes, sir. He said he had screwed up.

10 Q. Is that the word he used?

11 A. No, sir.

12 Q. Spell the word, if you don't want to say it.
13 We're in a court of law. What the evidence is, it is.

14 A. He stepped up and walked up to where I was at and
15 told me he had fucked up.

16 Q. Okay. What did he say after that?

17 A. That he had killed the bitch.

18 Q. Okay. Now, what did you say to him at that point?

19 A. I actually told him that -- I asked him, number
20 one, I didn't want to know nothing that he was into, because
21 he had already said he had already screwed up, so I didn't
22 want to deal with him anyway. I wasn't going to let him in
23 my house. I told him that he needed to go turn himself in.

24 Q. Okay. What did he say at that point?

25 A. That that wasn't going to happen.

1 Q. Okay. Did he make any statements to you regarding
2 how the offense had occurred, how he had killed -- what had
3 prompted him?

4 A. Yes, sir. He said that he had gone into the
5 house, and there had been an argument, and Carolyn had
6 pulled a gun on him, so he went to choke her.

7 Q. All right. When you stated to him that he needed
8 to go to the police or turn himself in to authorities, what
9 was his response?

10 A. That he wasn't going to do it, they would have to
11 take him dead.

12 Q. Okay. Did he make any statements about regarding
13 going back to where Carolyn was?

14 A. Yes, sir. When I told him that he needed to turn
15 himself in or go back there, he said he couldn't go back
16 there because she would have the cops looking for him.

17 Q. Now, was there anything unusual about that to you?

18 A. Yes, sir, it's kind of contradiction of statements
19 there.

20 Q. Okay. Now, how long does he remain at your house
21 that night?

22 A. Probably 10 to 15 minutes.

23 Q. Okay. And does he ever come into your home?

24 A. That night?

25 Q. Yes.

1 A. No, sir.

2 Q. At that point, does -- he's talking to you.

3 You've made that exchange. Do you tell him to leave?

4 A. Yes, sir.

5 Q. Does he?

6 A. He left.

7 Q. Okay. And at that point, had you seen him again
8 at all?

9 A. No, sir. I watched him until he drove off.

10 Q. What do you mean?

11 A. I watched -- my house is on top of a hill, so I
12 can see a couple of corners that you have to make to exit
13 the house, and I watched to make sure that the vehicle
14 lights had cleared the last hill before I went back inside.

15 Q. Now, the statement he made to you on the first
16 time that he came to your house, that he was borrowing the
17 victim's car while she was gone, do you recall that?

18 A. Yes, sir.

19 Q. Based on his statements the second day or the
20 second time that he came out there, meaning having killed
21 her, that first statement on the 27th or the 28th would
22 not have been accurate?

23 A. Yes, sir, true.

24 Q. Because she would have been dead?

25 A. Well, that I don't know. I know that the night,

1 the second time he showed up is when he told me that.

2 Q. And in both trips to her house he was in her
3 vehicle?

4 A. Yes, sir.

5 MR. BINGHAM: May I have one moment, Judge?

6 THE COURT: Yes.

7 (State's counsel confer.)

8 MR. BINGHAM: If we could just have one
9 moment, Judge.

10 (State's counsel confer.)

11 MR. BINGHAM: Judge, we'll pass the witness.

12 THE COURT: Mr. Perkins?

13 MR. PERKINS: Thank you, Judge.

14 CROSS-EXAMINATION

15 BY MR. PERKINS:

16 Q. Morning, Mr. Clary. How are you?

17 A. Good morning.

18 Q. My name is Robert Perkins. We never have seen or
19 talked to each other before, have we?

20 A. No, sir.

21 Q. Mr. Clary, what I want to do is kind of touch on a
22 couple of things that shouldn't take a couple of minutes.

23 If I understand what you're testifying about,
24 if -- Carolyn Click was your aunt; is that right?

25 A. Yes, sir.

1 Q. Now, is that your mother's sister?

2 A. That was my father's sister.

3 Q. Father's sister?

4 A. Yes, sir.

5 Q. Okay. And according to what I heard you say this
6 morning, you hadn't seen her since 1995?

7 A. Since my uncle's funeral.

8 Q. Okay. So that would have been -- let's see. My
9 math is not too good, but that would have been about --

10 A. Nine years.

11 Q. -- nine years ago?

12 A. Yes, sir.

13 Q. And you hadn't seen Tracy Beatty for even longer
14 than that; hadn't seen him in like more than ten years?

15 A. Yes, sir.

16 Q. The day that you first saw Tracy Beatty, you say
17 was either the 27th or 28th. You don't remember exactly
18 which day?

19 A. I know it was the day after Thanksgiving.

20 Q. Okay. And so if Carolyn had died on November the
21 25th, that would have been two or three days after her
22 death?

23 A. Yes, sir.

24 Q. And he shows up that evening about 7:00, and
25 that's in Eustace over in Henderson County?

1 A. Yes, sir.

2 Q. Driving that station wagon that we see in those
3 two pictures; is that right?

4 A. Yes, sir.

5 Q. On that occasion, you said that he had been
6 drinking, and I think the word that you used was
7 "inebriated." The word I'm going to use is -- is "drunk."

8 A. Intoxicated.

9 Q. Do you think he was drunk that day?

10 A. I think he was intoxicated, yes, sir.

11 Q. And you said something, and I didn't really
12 understand this part. You said there was alcohol in the
13 car, but that you didn't go out to the car.

14 A. No, sir, because he kept going to the car to get
15 another beer.

16 Q. Okay. So he had like an ice chest or something in
17 the car, and he was going back for it?

18 A. Yes, sir, I assumed. I don't know if he had an
19 ice chest or just sitting in the seat.

20 Q. Okay. And that's the day that he was talking to
21 you about needing the family ties to be stronger?

22 A. Yes, sir.

23 Q. And when he told you that he had borrowed the
24 vehicle to feed his dogs and to see his daughter, do you
25 know which daughter he made reference to?

1 A. The daughter that lived in Dallas.

2 Q. You don't know what her name is? He didn't say;
3 you don't remember?

4 A. No, sir.

5 Q. Okay. All right. And then again, you saw
6 Mr. Beatty driving the car, and this -- and I -- you said
7 either the 30th or the 31st. If I told you there was only
8 30 days in November, it would have been the 30th or
9 December 1st.

10 A. It would have been the 30th.

11 Q. Okay. So the end of November, first of December,
12 one of those days?

13 A. Yes, sir.

14 Q. He came back driving the same car, and, again, he
15 was drinking?

16 A. Yes, sir.

17 Q. Do you think on that occasion -- I mean, you've
18 seen people that were -- and I'll use drunk -- before,
19 inebriated, whatever you want to say, intoxicated. Do you
20 believe he was intoxicated on that day?

21 A. Yes, sir.

22 Q. Okay. This time you didn't know if he had more
23 beer in the car, because you basically didn't let him in.
24 You didn't spend as much time around him that time?

25 A. Yes, sir. He never went back to the car except to

1 leave.

2 Q. And this is when he used that -- told you "I
3 really --" I'll say messed up. We all know what he really
4 said. "I killed her. She pulled a gun on me. I went to
5 take the gun, and I choked her."

6 A. Yes, sir.

7 Q. "I can't go back, she'll call the cops."

8 A. Correct.

9 Q. That didn't make any sense to you then, did it?

10 A. No, sir.

11 Q. Because if she was dead, she couldn't call the
12 cops?

13 A. Exactly.

14 Q. Okay. At the time that he said this to you, did
15 you -- other than, you know, keep from coming in the house
16 and watching him -- telling him to leave and then watching
17 him leave, did you call the cops and tell them anything?

18 A. No, sir, because there was too much in conflict of
19 interest, and I knew that they had had their scuffles before
20 or their arguments.

21 Q. Okay. So you just kind of wanted to stay out of
22 it?

23 A. Yes, sir.

24 Q. You didn't inform the police that he had said that
25 he had killed her, or you didn't inform them even, "Hey,

1 he's drunk and driving down the road"?

2 A. No, sir.

3 Q. You were doing what a lot of people in a family
4 would, is just basically kind of staying out of it. Is that
5 safe for me to assume?

6 A. Yes, sir.

7 Q. When is the first time you told anybody with law
8 enforcement, whether it was the DA's Office or investigators
9 or policemen or anything? When is the first time you ever
10 told anybody that Tracy Beatty had admitted to you killing
11 his mother after she had pulled the gun on him?

12 A. It was approximately around the middle of December
13 when they called me.

14 Q. Around the middle of December?

15 A. Yes, sir.

16 Q. And who did you tell that to?

17 A. One of the investigators that called my workplace.

18 Q. Do you know who that was?

19 A. I can't recall if it was exactly Allen Beam or
20 not, but it was one of the investigators that was working
21 for the District Attorney.

22 Q. Okay. And that was December of what year?

23 A. 2003.

24 Q. December of 2003?

25 A. Yes, sir.

1 Q. Okay. And at the -- as far as this business about
2 pulling a gun on him, do you know -- I mean, I know it had
3 been a long time since you had seen your aunt. Do you know
4 whether or not she even owned any guns?

5 A. No, sir, I have no idea.

6 Q. You don't know?

7 A. No, sir.

8 Q. Okay. And when you say that, that you were
9 basically kind of staying out of it because they had had
10 their scuffles and arguments, are you referring to Tracy and
11 his mother, Carolyn?

12 A. Yes, sir.

13 Q. Mr. Clary, I appreciate you being down here, sir.

14 MR. PERKINS: We pass the witness, Your
15 Honor.

16 REDIRECT EXAMINATION

17 BY MR. BINGHAM:

18 Q. Mr. Clary, what type of scuffles were you aware
19 that they had had in the past?

20 A. I just know that there had been loud arguments,
21 and I don't know if there was any physical activity or not.
22 I know that before earlier, back in, I guess, late '80s,
23 early '90s, there was -- that they had conflict of interest.

24 Q. Okay. And had you known Carolyn -- when you knew
25 her, did she live at that residence in Whitehouse?

1 A. No, sir.

2 Q. Okay. That's been since -- where did she live
3 prior to 1995?

4 A. I couldn't tell you, sir.

5 Q. You had never been to her house?

6 A. No, sir.

7 Q. Now, the law enforcement that you spoke to, did
8 you ever speak to anyone from the Sheriff's Department that
9 you remember?

10 A. Not that I can recall. I may have.

11 Q. Do you think it was the DA's Office that contacted
12 you first?

13 A. Yes.

14 Q. And -- Mr. Clary, I appreciate it.

15 MR. BINGHAM: We don't have any further
16 questions for this witness.

17 THE COURT: Mr. Perkins?

18 MR. PERKINS: Can I have just a second,
19 Judge?

20 THE COURT: Yes, sir.

21 MR. PERKINS: I don't have any further
22 questions.

23 THE COURT: Mr. Bingham?

24 MR. HARRISON: Judge, we ask that he be
25 finally excused.

1 THE COURT: Sergeant, thank you very much.

2 You may --

3 Mr. Perkins?

4 MR. PERKINS: Judge, I would like for him to
5 be able to be allowed to go back to do whatever he's doing,
6 but leave him under the -- he's subpoenaed under the Rule of
7 Witnesses.

8 MR. BINGHAM: May we approach on that?

9 THE COURT: Yes.

10 (At the bench, on the record.)

11 MR. BINGHAM: He's not going to be staying
12 because he has to fly to 23rd Psalms -- I didn't say that.
13 He has to fly to Iraq tomorrow, and he's going to be gone.
14 And I don't want the defendant to know that, and he was very
15 concerned about that because he does not want the defendant
16 to know he's alone and his wife is alone. And that's why I
17 didn't bring that up.

18 MR. PERKINS: Let me just talk to him real
19 quick.

20 (Mr. Perkins confers with the witness.)

21 (End of bench conference.)

22 MR. PERKINS: That's fine, Judge. He can
23 finally be excused.

24 THE COURT: Sergeant, you are finally excused
25 as a witness in the case, which means you're released from

1 all the Court's instructions. And being a finally excused
2 witness, you may go wherever you need to. Thank you,
3 Sergeant.

4 THE WITNESS: Yes, sir.

5 (The witness leaves the courtroom.)

6 THE COURT: Who do you have next,
7 Mr. Bingham?

8 MR. BINGHAM: Judge, we have Betty McCarty.

9 THE COURT: Betty McCarty.

10 MR. BINGHAM: And, Judge, while she's coming
11 in, may we approach?

12 THE COURT: Yes.

13 (At the bench, on the record.)

14 MR. HARRISON: Judge, this is one of the
15 witnesses that the victim made statements to. I know
16 there's probably going to be hearsay objections. I just
17 wanted to take it up, I guess, as a preliminary matter at
18 this point.

19 The Court's aware -- the Judge is aware that
20 the statements that we referred to in the pretrial about
21 having -- that she had a conversation with the victim on the
22 day of the murder about having told the defendant to leave
23 her house, to kick him out of her house.

24 Those are, I guess, the Defense's position,
25 that it's going to be hearsay statements under our position

1 that they're not admissible.

2 THE COURT: Okay. We'll take about a
3 ten-minute recess.

4 MR. HAWK: That's fine.

5 THE COURT: I think it's about time, and we
6 can just do it outside the presence of the jury. Whatever
7 else additional, you can put on outside the presence of the
8 jury.

9 MR. HAWK: That's fine.

10 (End of bench conference.)

11 THE COURT: Carleton, up here.

12 Ladies and Gentlemen, we're going to take
13 about a ten-minute recess. It won't be any longer than
14 that, but just a short break.

15 All rise for the jury.

16 (The jury leaves the courtroom.)

17 (Open court, defendant present, no jury.)

18 THE COURT: Okay. Let's go back on the
19 record in Cause Number 241-0978-04, the State versus Tracy
20 Beatty. State's counsel is present; defense counsel is
21 present; the defendant is present.

22 Mr. Harrison, you indicated this next
23 witness -- what was the witness's name?

24 MR. HARRISON: Betty McCarty.

25 THE COURT: That Betty McCarty, this next

1 witness, was the witness who you had proffered the testimony
2 earlier to the Court in regard to her testifying something
3 to the effect that she was present and heard -- I believe
4 this was -- was this on the day of the murder?

5 MR. HARRISON: Yes, sir.

6 THE COURT: Heard the decreased, Carolyn
7 Click, make -- what was the statement you said?

8 MR. HARRISON: Judge, the --

9 THE COURT: Something to the effect that she
10 had to move out today or something like that.

11 MR. HARRISON: She had come over and told
12 Tracy, her son, to leave, that she was tired -- Carolyn
13 Click was telling Ms. McCarty that she was tired of his
14 attitude toward her and she had had enough, that she was
15 stressed out at that time.

16 THE COURT: All right. Go ahead.

17 I'll give Mr. Perkins -- I know he's already
18 responded to some degree when I lifted the motion, but go
19 ahead and state the basis, the legal basis, on which you
20 believe that testimony of Ms. McCarty -- is it --
21 admissible.

22 MR. HARRISON: McCarty. And, Judge, there
23 are other statements that actually came from the victim,
24 Carolyn Click, to Betty McCarty, statements made by the
25 victim to Ms. McCarty that we would be going into.

1 THE COURT: Okay.

2 MR. HARRISON: Those statements would be --
3 they would include -- and I think the --

4 THE COURT: Are these all on the same day, or
5 how far back are we going back here?

6 MR. HARRISON: No. These would not
7 necessarily be on the same day. Some of them would have
8 been from mid-November up and through and including the
9 25th of November.

10 THE COURT: Okay. Go ahead.

11 MR. HARRISON: For instance, in mid-November,
12 the victim had told Ms. McCarty that she had told the
13 defendant to get out. That was one of the times that she
14 had kicked him out of her residence.

15 THE COURT: All right.

16 MR. HARRISON: She related that information
17 to Ms. McCarty. She also related information on the 25th,
18 as we have indicated, that she had told the defendant that
19 morning to leave and that she was stressed out and tired and
20 fed up with what he had been doing.

21 She, the victim, Ms. Click, had told the --
22 Ms. McCarty that the defendant had beat her up on two
23 separate occasions. Now, I don't have a time for when that
24 statement was relayed from the victim to Ms. McCarty, but
25 she did state that she had been beat up by the defendant on

1 two occasions. The victim told Ms. McCarty that the
2 defendant and she argued all the time.

3 MR. PERKINS: Maybe we should take these up
4 one at time and see if I have any objections, Judge. I
5 didn't know there was going to be laundry list of them.

6 THE COURT: Well, that's fine.
7 Go ahead.

8 MR. HARRISON: And, really, I think the law
9 is going to be -- I don't know that there is going to be a
10 distinction based on time, but we can certainly take them up
11 individually. I guess, we can start with the victim having
12 told Ms. McCarty that the defendant beat her up on two prior
13 occasions.

14 MR. PERKINS: We object to that.

15 MR. HARRISON: The reason we believe that
16 it's admissible would be threefold. One, it goes to the --
17 under 803.3, the declarants existing -- then existing mind
18 of emotions, sensation, or physical condition. And it's
19 irrelevant whether the declarant is available or unavailable
20 as a witness.

21 THE COURT: Mr. Harrison, that this defendant
22 had beat her up on two separate occasions. I believe you
23 said her position is the time frame doesn't make any
24 difference. About when did you say that took place?

25 MR. HARRISON: Judge, I'm not sure when that

1 statement was made to Ms. McCarty.

2 THE COURT: Okay. Go ahead.

3 MR. HARRISON: The second reason that would
4 be admissible would be pursuant to 38.06 under the Code of
5 Criminal Procedure. In prosecutions for murder, all
6 relevant facts and circumstances surrounding the killing and
7 the previous relationship existing between the accused and
8 the deceased, together with all relevant facts and
9 circumstances, go in to show the condition of the accused's
10 mind at the time of the offense are admissible.

11 There is case law in support of that.
12 Jagers versus State, 125 SW 3d 661; Dorsey versus State,
13 117 SW 3d 332. And specifically under those two exceptions,
14 we believe that that statement and that testimony would be
15 admissible and would be excepted from the Hearsay Rule.

16 THE COURT: All right. That's the statement
17 the defendant had beat her up on two separate occasions.

18 MR. HARRISON: Yes, sir.

19 THE COURT: All right. Mr. Perkins, I know
20 you've already objected to it. Do you have anything else
21 you want to add?

22 MR. PERKINS: Yes, we would object to it as
23 being hearsay, as that's not an exception to the Hearsay
24 Rule. 38.36 does not provide an exception to the Hearsay
25 Rule. There's no time frame to put this in any kind of

1 context. You know, we don't know if these are the occasions
2 in 1985 or 1991 or if they're -- and we're just left to
3 conjecture just as the jury would be left to conjecture on
4 it.

5 The probative value of it is virtually zero.
6 The prejudicial value is enormous toward Mr. Beatty. So it
7 denies us our right of confrontation. So for all the
8 reasons previously stated into the record, we object. We
9 don't feel like that that should be properly admitted before
10 the jury in this case.

11 THE COURT: Anything further on that one,
12 Mr. Harrison?

13 MR. HARRISON: Just that, additionally, it
14 goes to the proof of motive. And although proof of motive
15 is not something specifically required as proof by the
16 State, it has always been held to be relevant pursuant to
17 Saldibar versus State, which is 980 SW 2d 475.

18 And that was a case in which it was held
19 admissible when the victim in a case -- in this case, Tejana
20 star, Selena, had told a witness she was going to fire the
21 appellant -- and it was held admissible, because her intent
22 to terminate the appellant's employment was relevant to show
23 the state of the relationship between the complainant and
24 the appellant at the time of the shooting and to establish a
25 motive for the shooting.

1 THE COURT: All right. The Court will, based
2 on the State's proffer -- based on the State's proffer, if
3 this is the testimony of the witness, as proffered by the
4 State, the Court will admit the testimony of the witness to
5 the effect that the defendant had beat her up on two
6 separate occasions under 803 and under 38.36. And the Court
7 finds the testimony relevant, and the Court's -- the
8 testimony will be considered to show motive and that the
9 probative value outweighs any prejudicial values.

10 So let me correct -- probative value
11 outweighs any prejudice. Further, the Court will admit the
12 statement of the witness, the defendant beat her up on two
13 separate occasions.

14 MR. PERKINS: So the defendant's objections
15 to that is overruled?

16 THE COURT: Yeah. I'm sorry, Mr. Perkins.
17 It's overruled.

18 Go ahead, Mr. Harrison.

19 MR. HARRISON: Judge, the next statement
20 would be that the victim had told Ms. McCarty that the
21 victim and the defendant argued all the time, with the
22 defendant constantly yelling at her. Under the same
23 provisions that I previously articulated, we believe that
24 that would be admissible.

25 MR. PERKINS: I'm sorry. What was the

1 proffer, Judge?

2 MR. HARRISON: That the victim had told
3 Ms. McCarty that the victim and the defendant argued all the
4 time, with the defendant yelling at her constantly.

5 MR. PERKINS: We don't object to that.

6 THE COURT: Okay. That will be -- well, when
7 we get to it, if that is the testimony, then that will be
8 admitted based on the proffer with no objection.

9 What else have you got, Mr. Harrison?

10 MR. HARRISON: The next statement would be
11 that in mid-November, the victim told Ms. McCarty that the
12 victim had told the defendant to get out of her house. And
13 under the same reasons previously articulated, we believe
14 those would be admissible statements.

15 MR. PERKINS: Can I have just a second,
16 Judge?

17 THE COURT: That's on November the 25th then,
18 the day of the murder?

19 MR. HARRISON: No, sir. That was
20 mid-November.

21 THE COURT: I'm sorry. Mid-November.

22 MR. HARRISON: It's not dated specifically,
23 but it would have been early to mid-November.

24 THE COURT: All right. That's the first one
25 that you started with, mid-November?

1 MR. HARRISON: Correct.

2 THE COURT: That Ms. McCarty, in your
3 proffer, had said that the victim had told the defendant to
4 get out of her house?

5 MR. HARRISON: Yes, sir.

6 So the record is clear and not muddled, there
7 were two separate occasions on two separate time frames
8 where the victim had told Ms. McCarty she had told the
9 defendant to get out of her house. This would be the first
10 to get out of the house.

11 THE COURT: The mid-November and then on the
12 date of the offense?

13 MR. HARRISON: Correct.

14 MR. PERKINS: We object to those under the
15 grounds previously stated, Judge, that it's hearsay, that
16 it's irrelevant, that the prejudicial effect outweighs any
17 probative value.

18 THE COURT: All right. The Court will find
19 those two -- the statements are basically the same; is that
20 correct, Mr. Harrison?

21 MR. HARRISON: Referencing those two separate
22 times, yes, the statements are essentially the same.

23 THE COURT: All right. The statements to the
24 effect in mid-November that the witness has proffered to
25 testify to, that the victim told the defendant to get out of

1 the house. And then on November the 25th, the proffer that
2 the victim told the defendant to get out of the house.

3 Is that again the same statement, okay.
4 Mr. Harrison.

5 MR. HARRISON: Yes, sir.

6 THE COURT: The Court will find -- the Court
7 finds those statements relative -- I'm sorry -- the Court
8 finds those statements relative and admissible under 803.3,
9 38.36, and that the probative value outweighs the
10 prejudicial value -- the prejudice -- the probative value
11 outweighs the prejudice. The motion (sic) is overruled on
12 those two, also, Mr. Perkins.

13 Is that it?

14 MR. HARRISON: Judge, there is one more
15 that -- and, again, because there are two, I wanted to be
16 specific. This would be the mid-November time when the
17 victim had related to Ms. McCarty that the victim had kicked
18 out the defendant -- kicked him out of her house.

19 THE COURT: Okay. Well, that --

20 MR. HARRISON: At that same, she told -- the
21 victim told Ms. McCarty that the victim had called his
22 parole officer and relayed that she had kicked him out of
23 her house and was no longer living there and that that
24 should be used for whatever purpose the parole officer
25 thought it should be used for.

1 And I want to expand on the reason why we
2 believe that that would be admissible.

3 THE COURT: Okay. As I understood, he
4 first -- to get out of her house, is that -- is the
5 statement in mid-November, get out of her house, or she
6 kicked him out of her house?

7 MR. HARRISON: Well, that she had kicked him
8 out and told him to leave the house.

9 THE COURT: Okay. Kicked him out and told
10 him to leave the house in mid-November.

11 All right. My ruling is the same on that.

12 And on the day of the offense, is the
13 statement she told him to get out of the house, or she
14 kicked him out of the house?

15 MR. HARRISON: She had told Tracy, her son,
16 to leave -- what's in her written statement is she had told
17 Tracy, her son, to leave. She said she was tired of his
18 attitude toward her, and she had had enough, and she was
19 stressed at this time.

20 THE COURT: Okay. That's my ruling is what I
21 stated on that, that one on the 25th of November, the date
22 of the offense, that it's relevant and admissible under
23 803.3 and 38.36. It goes to motive and probative -- the
24 probative value outweighs the prejudice.

25 So Mr. Perkins' objection on that one is

1 overruled.

2 Now, go to this other one about the parole
3 officer.

4 MR. HARRISON: Judge, I'm going to withdraw
5 that request.

6 THE COURT: Okay. So there is not going to
7 be any reference to the parole officer?

8 MR. HARRISON: No, and I've told her, and
9 I'll tell her again before she takes the stand, not to
10 mention anything about the parole officer or felony
11 convictions, incarcerations.

12 THE COURT: Be sure and do that.

13 All right. Are we ready for the jury then?

14 MR. HARRISON: If I could just tell her.

15 MR. PERKINS: Judge, if the Court will allow
16 me, rather than having to make these objections --

17 THE COURT: Yes, I will.

18 MR. PERKINS: -- in the presence of the jury,
19 to incorporate my objections to any statement that was
20 allegedly said to Betty McCarty by Carolyn Click,
21 incorporate the same objections, that being hearsay, being
22 irrelevant, and being more prejudicial than probative, if
23 the Court would allow me to incorporate those objections now
24 rather than have to make them in the presence of the jury.

25 THE COURT: Mr. Perkins, I will unless it

1 goes outside what the proffer is. I mean, I --

2 MR. PERKINS: If it goes outside the proffer,
3 I'm going to have a different objection that I'll make.

4 THE COURT: Well, I'm ruling on what the
5 proffer is that's been made to me. My ruling has been on
6 what proffer Mr. Harrison has made to me.

7 Now, if I -- you know, if there's some
8 response outside the proffer, Mr. Harrison, that may be a
9 problem. You understand? In other words, because I'm
10 ruling on what you stated the proffer is.

11 MR. HARRISON: And, Judge, I've given all the
12 statements that came from the victim that Ms. McCarty has
13 told me about.

14 THE COURT: Okay.

15 MR. HARRISON: So those are the only ones
16 that I'm going to be asking her about.

17 THE COURT: Okay. Now, are those the
18 statements that the Defense has?

19 MR. HARRISON: Judge, the only one that's
20 actually in her written statement is the one about the one
21 about the kicking him out on November 25th.

22 THE COURT: Okay. Well, did you like prepare
23 something, like put it on paper that they have, or is this
24 what they're getting right now?

25 MR. HARRISON: The one from the 25th is in

1 her written statement --

2 THE COURT: Okay.

3 MR. HARRISON: -- that has been previously
4 turned over to the Defense.

5 THE COURT: All right. The others you've
6 just proffered they're getting them now?

7 MR. HARRISON: Well, they're getting them
8 through our proffer.

9 THE COURT: That's what I mean.

10 MR. HARRISON: Yes. Yes, that's correct.
11 They're not in written statements.

12 THE COURT: Okay.

13 MR. HARRISON: They were just...

14 THE COURT: Okay. I just want you to be sure
15 and state on that proffer in terms of what she's going to be
16 asked or --

17 MR. HARRISON: Yes, sir. That is what I
18 intend to ask her, and those are the responses that she has
19 given me during my interview with her prior to today.

20 THE COURT: Okay.

21 (Off-the-record discussion.)

22 THE COURT: Carleton, would you go get the
23 jury?

24 (The jury enters the courtroom at 11:20 a.m.)

25 (Open court, defendant and jury present.)

1 THE COURT: Be seated, please.

2 Carleton?

3 THE BAILIFF: Yes, sir.

4 THE COURT: This is on the record.

5 (At the bench, on the record.)

6 THE COURT: Anything she had -- we need to be
7 sure that she is not tape-recording anything taking place in
8 court. That's probably just something she's got for
9 interviews.

10 THE BAILIFF: Kristen had spoke with her and
11 said that she had gave her something for you to sign.

12 THE COURT: Okay. Just be sure that --

13 THE BAILIFF: She assured me that she was
14 doing nothing but rewinding the tape up to this point.

15 (End of bench conference.)

16 THE COURT: All right, Mr. Harrison.

17 MR. HARRISON: Judge, we would call Betty
18 McCarty.

19 THE COURT: Betty McCarty.

20 (The witness enters the courtroom.)

21 THE COURT: Ms. McCarty? Yes, ma'am. Just
22 come on down here, please. Come right on around to the end
23 chair here where the microphone is.

24 You were just sworn earlier this morning as a
25 witness, correct?

1 THE WITNESS: Yes, sir.

2 THE COURT: All right, ma'am. Just have a
3 seat right there. And you can pull the chair up a little
4 bit towards the microphone, if you would.

5 THE WITNESS: (Complies.)

6 THE COURT: There you go. Thank you, ma'am.
7 Just a second.

8 MR. HARRISON: May I proceed?

9 THE COURT: Yes.

10 BETTY MCCARTY,
11 having been first duly sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HARRISON:

14 Q Ms. McCarty, would you state your name and
15 introduce yourself, where you live for the jury?

16 A Okay. I'm Betty McCarty. I live in Whitehouse,
17 Texas.

18 Q And how long -- where do you live, first of all,
19 in Whitehouse?

20 A On County Road 2323.

21 Q Is that in Smith County, Texas?

22 A Yes, sir.

23 Q How long have you lived at that residence?

24 A Eleven years.

25 Q And what type of residence is that?

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241ST JUDICIAL DISTRICT COURT
SMITH COUNTY, TEXAS

1 A It's a mobile home.

2 Q Can you describe kind of that -- the general area?
3 What's out there in your area?

4 A Are you talking about the roadways or --

5 Q Well, are there other mobile homes? Are there --

6 A Yes. It's -- on 2323 there, it is -- it's not
7 like a mobile home park, but it's big lots, and it's all --
8 all the whole street. It's a dead-end street, and it has --
9 it's just mobile homes.

10 Q Okay. So each mobile home would then have land
11 that the mobile home sits on?

12 A Yes, uh-huh.

13 Q All right. And the land, I guess, would belong to
14 each individual lot owner --

15 A Yes.

16 Q -- or mobile home owner?

17 A Yes, sir.

18 Q All right. You've lived out there for about the
19 last 11 years.

20 A Yes.

21 Q Let me ask you, are you familiar with an
22 individual by the name of Carolyn Ruth Click?

23 A Yes, sir.

24 Q How did you know Carolyn Click?

25 A I met her about 11 years ago when she moved her

1 mobile home next door to us there.

2 Q So she was one -- Carolyn Click was one of your
3 neighbors?

4 A Yes, sir.

5 Q Did she live in a mobile home?

6 A Yes, sir.

7 Q Did she have a lot or property upon which her
8 mobile home sat?

9 A Yes, sir.

10 Q You indicated she had moved there about 11 years
11 ago?

12 A Uh-huh.

13 Q All right. Is that an estimate?

14 A Estimate, uh-huh.

15 Q All right. Could you describe your relationship,
16 as far as whether you were social, whether you were
17 friendly, what kind of relationship you had with Carolyn
18 Click?

19 A Well, we had become very close. It wasn't a day
20 that I didn't see her or talk to her. And we -- we were
21 good buddies, talked over everything and visited and saw one
22 another through, you know, hard times and everything. But
23 we were very close.

24 Q Is your residence within eye shot of her
25 residence?

1 A Yes, sir.

2 Q Can you describe kind of the layout between your
3 home to her home, kind of how far they were apart, anything
4 in between them?

5 A Well, like the -- her --

6 Q Let me ask you this: Would it help you to be able
7 to draw kind of the layout of the houses around you?

8 A Yeah, 'cause --

9 Q Could you do that?

10 A Yes.

11 MR. HARRISON: Judge, may I approach the
12 board?

13 THE COURT: Yes.

14 MR. HARRISON: And may the witness step down?

15 THE COURT: She may. And, Mr. Harrison, if
16 you're going to be questioning her while she is at the
17 diagram or having her explain it -- ma'am, if you're being
18 asked questions and you're over there at the diagram, would
19 you try to turn towards the jury so they can hear you
20 'cause -- and then keep your voice up, would you, please --

21 THE WITNESS: Yes, sir.

22 THE COURT: -- so we can get everything down.

23 MR. HARRISON: Judge, actually, I'm going to
24 wait until we get a pad. There's only the board right now.
25 Mr Bingham is going to get a pad. I can move on to

1 something else.

2 THE COURT: Okay.

3 MR. HARRISON: May I continue to approach?

4 THE COURT: Yes. I'm sorry, Mr. Harrison.
5 Go ahead.

6 Q (By Mr. Harrison) Let me show you some
7 photographs, Ms. McCarty, starting with State's Exhibit
8 Number 4. I want to just ask if you, first of all,
9 recognize what it is.

10 A That's the back of Ms. Click's mobile home.

11 Q Okay. Does this fairly and accurately depict how
12 the back of her mobile home appeared?

13 A Yes, sir.

14 Q All right. Now, you started to call her a
15 different name than Carolyn Click. What was that name?

16 A Callie.

17 Q Do you know her as Callie?

18 A Yes, sir.

19 Q Is that the same individual -- if you refer to her
20 as Callie, are you referring to Carolyn Click?

21 A Yes, sir.

22 Q Let me show you State's Exhibit Number 5.

23 A Yes, sir. That's the end of the mobile home.

24 Q And, again, does it fairly depict the mobile home
25 of Carolyn Click?

1 A Yes, sir.

2 Q Show you State's Exhibit Number 6. Can you
3 identify what that is?

4 A Yes. It is the -- it's the gate that divides hers
5 from another next-door neighbor.

6 Q Does it fairly -- basically, what I want to know,
7 do these photographs fairly depict what they purport to,
8 that being the home of Carolyn Click?

9 A Yes, sir.

10 Q All right. Looking at State's Exhibit Number 7,
11 do you recognize that?

12 A Yes, sir.

13 Q And does it fairly depict the land and part of the
14 home of Carolyn Click?

15 A (Nods head affirmatively.)

16 Q I'm sorry. You need to answer out.

17 A Yes, sir.

18 Q State's Exhibit Number 8, do you recognize that?

19 A Yes, sir.

20 Q And does it fairly depict the portion of the
21 backyard of Carolyn Click's house?

22 A Yes, sir.

23 Q State's Exhibit Number 9, can you identify that?

24 A I can identify the area.

25 Q Okay. And is this area part of the land owned by

1 Carolyn Click?

2 A Yes, sir.

3 Q And does it accurately portray that?

4 A Yes, sir.

5 Q Looking at State's Exhibit Number 10, can you
6 identify what that is?

7 A Yes, sir. That's the front of her mobile home and
8 her yard.

9 Q Does it fairly depict the front of her home and
10 yard?

11 A Yes, sir.

12 Q State's Exhibit Number 11, the different angle, is
13 it the home of Carolyn Click?

14 A Yes, sir.

15 Q And does it fairly and accurately depict the home
16 as it appeared in November of 2003?

17 A Yes, sir.

18 Q State's Exhibit Number 12, can you identify that?

19 A That's the back of her mobile home.

20 Q And "her," you mean Carolyn Click?

21 A Carolyn. Callie. Excuse me.

22 Q All right. Callie and Carolyn Click?

23 A Yes.

24 Q Does it fairly and accurately depict the back of
25 her mobile home?

1 A Yes, sir.

2 Q State's Exhibit Number 13?

3 A Yes, sir.

4 Q What is this?

5 A That's farther on in the backyard.

6 Q Okay. Of Carolyn Click?

7 A Uh-huh.

8 Q And is this, again, the property owned by Carolyn
9 Click?

10 A Yes, sir.

11 Q State's Exhibit Number 14, can you identify that?

12 A Yes, sir.

13 Q And what is that?

14 A It's the far backyard of Callie's.

15 Q Okay. Looking at State's Exhibit Number 15, can
16 you identify this?

17 A Yes, sir. That's closer to our backyard.

18 Ms. Click's yard connects with mine.

19 Q Okay. Looking at State's Exhibit Number 16, can
20 you identify that?

21 A Yes, sir.

22 Q And what is this?

23 A That's the far backyard of Ms. Click's.

24 Q And State's Exhibit Number 17, can you identify
25 that?

1 A Yes, sir. That's directly behind that second
2 trailer that's in her backyard.

3 Q Is this on the property owned by Carolyn Click?

4 A Yes, sir.

5 MR. HARRISON: Judge, at this time, having
6 shown to defense counsel State's Exhibits 4 through and
7 including State's Exhibit Number 17, we would offer 4
8 through 17.

9 MR. PERKINS: No objection to any of those.

10 THE COURT: All right. State's Exhibit
11 Number 4 through 17 are admitted with no objection.

12 MR. HARRISON: And, Judge, may I set up the
13 tripod?

14 THE COURT: Sure.

15 MR. HARRISON: And may the witness step
16 around?

17 THE COURT: She may.

18 Mr. Harrison, she may -- can you get through
19 there, Ms. McCarty?

20 Q (By Mr. Harrison) Now, I'll mark this for
21 identification purposes as State's Exhibit 19. If you
22 could, could you just kind of just roughly draw the homes
23 around you and Carolyn Click's home and kind of how they're
24 laid out?

25 A Okay. Do you want more than mine and hers -- mine

1 and Ms. Click's?

2 Q Any of them that are in the immediate area, yes,
3 ma'am.

4 A (Complies.)

5 MR. PERKINS: Judge, may I move around so I
6 can see?

7 THE COURT: Sure.

8 A This would be the mobile home on the right side of
9 Ms. Click's mobile home (indicating).

10 Q (By Mr. Harrison) Do you know who owned this
11 mobile home?

12 A I can't remember his last name. This would be
13 Ms. Click's mobile home.

14 Q Go ahead and put "C.C." for Carolyn Click, if you
15 would --

16 A Okay. (Complies.) And then this would be the
17 trailer that I live in (indicating).

18 Q Okay. Go ahead and put your initials there, if
19 you would.

20 A (Complies.)

21 Q Be "B.C." for Betty McCarty?

22 A Yes, sir. This on to the -- on to the left is a
23 vacant lot (indicating).

24 Q And then I guess put "V" for "vacant."

25 A (Complies.)

1 Q Or go ahead and put "V-A-C."

2 A (Complies.) On down is an empty small mobile home
3 that they're going to put a craft shop in, but it's
4 unoccupied.

5 Q If it's empty, go ahead and just label it empty, I
6 guess.

7 A (Complies.) Now, on the other side, I don't know
8 the people's names, but there are one, two, three, four,
9 five -- about five more mobile homes as you turn onto the
10 street.

11 Q If you're talking about from Carolyn Click's home,
12 you're talking about to the -- what would be to the -- if
13 you're looking at --

14 A If you're looking at it to my right.

15 Q To your right?

16 A Uh-huh.

17 Q Okay.

18 A About six more.

19 Q So they extend on this way (indicating)?

20 A Uh-huh.

21 Q All right. Are there any across the street from
22 Ms. Click's on either side?

23 A Yes, sir. There's -- there's one going from
24 ours -- let's see. And I do not know these people's names,
25 but there's one directly across from our trailer. There's

1 one directly across from Carolyn -- Callie's here
2 (indicating).

3 Q Do you know who lives there, the one directly
4 across from Ms. Click's?

5 A First name is -- I can't think --

6 Q That's all right.

7 A I can't think of her name.

8 Q And --

9 A And then this one (indicating) belongs to
10 Ms. Wilkerson.

11 Q Lieanna Wilkerson? Is it Lieanna Wilkerson?

12 A Uh-huh.

13 Q Go ahead and label with an "L-W."

14 A (Complies.)

15 Q Now, you put that across from your mobile home?

16 A Uh-huh. I still can't remember her name.

17 Q Do you know a Twyla Johnson?

18 A That's her.

19 Q Okay. Where you've marked "T-J," is that where
20 Twyla Johnson lives?

21 A Uh-huh.

22 Q That's fine. Now, is there a mobile home here
23 where you've started making one and stopped (indicating)?

24 A I'm trying to figure if I'm going the right way.
25 Next to -- I'm looking at it like I'm -- that's right.

1 That's right. There is another mobile home. In other
2 words, there's mobile homes across the street all the way.

3 Q So, essentially, you have people who live across
4 the street from one another?

5 A Uh-huh.

6 Q Do each of these mobile homes you've identified
7 have lots that are with those mobile homes?

8 A Yes, sir.

9 Q Thank you, ma'am. You can go ahead and make it
10 around.

11 THE COURT: Is that 18 up there,
12 Mr. Harrison?

13 MR. HARRISON: That's 19.

14 Q (By Mr. Harrison) Now, Ms. McCarty, can you still
15 see what I've marked as State's Exhibit 18? You can still
16 see it from where you are?

17 A Yes, sir.

18 Q All right. I'm sorry. Number 19.

19 THE COURT: All right.

20 Q (By Mr. Harrison) You can see what I've marked as
21 State's Exhibit Number 19. Now, across the street, directly
22 across from Carolyn Click's house, is Twyla Johnson's house?

23 A Uh-huh.

24 Q Kind of catercornered across the street would be
25 Lieanna Wilkerson's house?

1 A Yes, sir.

2 Q And you are an immediate next door neighbor of
3 Carolyn Click?

4 A Yes, sir.

5 Q What is separating your mobile home from Carolyn
6 Click's mobile home?

7 A There's a fence. Her front yard is completely
8 enclosed in a fence. And then ours has a fence going down,
9 and there's like a driveway in between our fence and her
10 mobile home.

11 Q What type of fence; is it a Cyclone fence or wood
12 fence?

13 A Around her house is a Cyclone fence, and ours is
14 just a regular wire fence going up our side.

15 Q Now, you indicated that Ms. Click had lived next
16 door to you for about 11 years or so?

17 A Yes, sir.

18 Q From the time she moved in 11 years before, did
19 she move in with somebody? Did she live with someone, or
20 was she the sole occupant of that mobile home?

21 A In this mobile home?

22 Q Yes, ma'am.

23 A She was the sole occupant.

24 Q All right. So she actually moved in by herself
25 and lived by herself?

1 A Yes, sir.

2 MR. HARRISON: May I approach again, Your
3 Honor?

4 THE COURT: Yes.

5 Q (By Mr. Harrison) Now, these have already been
6 offered into evidence. What I want to do is I want to show
7 you State's Exhibit Number 4. What is this a photograph of?

8 A This is the back of her mobile home. The back
9 door opens into -- opens into the hall that has the
10 bathroom, and this is a back bedroom (indicating).

11 Q So this would be the back door (indicating) to her
12 mobile home?

13 A Yes, sir.

14 Q Whose fence is this (indicating)?

15 A That belongs to -- it's a Spanish gentleman, and I
16 can't remember his name.

17 Q Is that to the other side of Ms. Click than you
18 are?

19 A Yes, sir.

20 Q So that would be that one that's unlabeled next to
21 Carolyn Click?

22 A Yes, sir.

23 Q All right. Looking at State's Exhibit Number 5,
24 is this the same area, same fence?

25 A Yes, sir. That's the wooden fence that's next to

1 the other side of her than us.

2 Q And closer up here (indicating), you can see the
3 grills that are here and the garden hose that's kind of
4 coiled up?

5 A Yes, sir.

6 Q Was this, I guess, the corner of the backyard of
7 Carolyn Click?

8 A Yes, sir.

9 Q All right. And I guess this little fence right
10 here (indicating) that's shorter than the side fence, that
11 would lead out to the front or the side of the mobile home
12 into the front yard?

13 A Into the front yard.

14 Q Okay. State's Exhibit Number 6 would just be a
15 close-up of that area that we just talked about?

16 A Yes, sir.

17 Q And you can see these, I guess, wooden posts or
18 beams that are here in this back corner?

19 A Yes, sir.

20 Q Laying on the ground?

21 A Yes.

22 Q Looking at State's Exhibit Number 7, I guess this
23 would be the same area we've been talking about from a
24 different view?

25 A Yes, sir, it's the same area.

1 Q Now, looking out, you see a mobile home directly
2 across from Carolyn Click's house. Would that be the mobile
3 home of Twyla Johnson?

4 A I believe that's Twyla's, yes.

5 Q So it would be pretty much directly across from
6 Ms. Click's house.

7 A Yes, sir.

8 Q And, again, you can see, short of this side fence,
9 the barbeque equipment and these beams or posts that are
10 laying on the ground scattered?

11 A Yes, sir.

12 Q State's Exhibit Number 8, would that be a close-up
13 view of the beams and posts still in that same back corner
14 of Ms. Click's house?

15 A Yes, sir.

16 Q Can you see on top of these boards and then around
17 the ground -- can you see that gray stuff?

18 A Yes, sir.

19 Q I don't imagine you know what that is, do you?

20 A No, sir.

21 Q All right. State Exhibit 9 would be another
22 close-up of the view of those posts and the wood that's in
23 that back corner of Ms. Click's house?

24 A I'm not familiar with the wood part. The fence
25 over on the right I recognize.

1 Q And this would be the same general area that we've
2 been talking about with regard to State's Exhibits 6, 7, 8
3 true?

4 A Yes, sir.

5 Q You can see the wood boards and part of the grill
6 and part of the curled-up hose?

7 A Yes, sir.

8 Q Looking at State's Exhibit Number 10, what does
9 this depict?

10 A This is -- the side of our mobile home is on this
11 side of the fence here.

12 Q On the right-hand side?

13 A Uh-huh. We're to the left of -- this end of the
14 mobile home is ours.

15 Q Let me ask you this: Whose mobile home is this in
16 the middle of the picture?

17 A That's Callie's.

18 Q Okay. Carolyn Click?

19 A Yes, sir.

20 Q This yard, I guess if you're looking at the
21 photograph on the left-hand side of the fence, would that be
22 her yard?

23 A Yes, sir.

24 Q What is this fence? This metal fence, what does
25 it separate?

1 A It separates -- it goes all the way around the
2 lot. It separates her yard from the driveway between us.

3 Q Okay. So you would be the next door neighbor here
4 looking at the photograph on the right-hand side to the
5 right of her mobile home?

6 A Yes, sir.

7 Q So you actually -- I mean, there's nothing really
8 blocking your view of her mobile home. There's no wooden
9 fence separating your view?

10 A No, sir.

11 Q Was it fairly easy to kind of keep tabs on
12 Ms. Click?

13 A Yeah. Yes, sir.

14 Q Would you consider yourself, you and Ms. Click to
15 be good neighbors, people who would keep tabs on each other?

16 A Very much so.

17 Q I don't mean that in a negative way.

18 A Yeah, very much so.

19 Q Y'all cared for each other?

20 A Yes, sir.

21 Q State's Exhibit Number 11, is this Ms. Click's
22 mobile home?

23 A Yes, sir.

24 Q What is this fence here (indicating) in the front
25 of the photograph?

1 A That's a continuation of the fence that's on the
2 side that goes around the front of the lot and up the side,
3 also, there where they connect.

4 Q Did you say this (indicating) was the front or the
5 back of her mobile home?

6 A That's the front.

7 Q All right. Looking at State's Exhibit Number 12,
8 whose mobile home is this?

9 A It's Ms. Click's, and it's the back of the mobile
10 home, backyard.

11 Q This would be the back door (indicating)?

12 A Yes, sir.

13 Q And it just shows around to the left of the mobile
14 home?

15 A Beg your pardon?

16 Q It goes on to show around to the left of the
17 mobile home?

18 A Yes.

19 Q What is shown in State's Exhibit Number 13?

20 A This is where another fence separates her main
21 yard from a backyard. That's where she kept two of her
22 dogs, back in there, but it was fenced in. It's all fenced
23 in. And this is the little store room mobile home she had,
24 and, of course, her swing set.

25 Q All of this land or property, it goes with the

1 mobile home that belongs to Carolyn Click?

2 A Yes, sir.

3 Q Looking at State's Exhibit 14, what does this
4 show?

5 A Okay. This goes into the backyard where she kept
6 her dogs, and it's divided by a fence behind this storage
7 building here (indicating). It was a big wooded area, and
8 she kept her dogs out there.

9 Q Is this part of Carolyn Click's property, also?

10 A Yes, sir.

11 Q Part of her lot?

12 A Yes, sir.

13 Q How many dogs did Ms. Click have?

14 A Let's see. One, two, three (counting) -- five.

15 Q Looking at State's Exhibit Number 15, what does
16 this show?

17 A This is that backyard again where the dogs were
18 kept. And this is real close to our fence, this area of it
19 is (indicating).

20 Q Whose property is this that's shown in the
21 majority of the photographs?

22 A That's Ms. Click's property.

23 Q And the same thing with State's Exhibit Number 16,
24 is that Ms. Click's property, also?

25 A Yes, sir.

1 Q Now, you can kind of see this area right here in
2 the middle photograph that I've circled with my finger. Do
3 you know what that is by any chance?

4 A There was a burn pile out there.

5 Q All right. Burn pile, was that on Ms. Click's
6 property?

7 A Yes, sir.

8 Q All right. And kind of a closer-up, State's
9 Exhibit Number 17, is this -- what I'm circling, is that the
10 burn pile that you're talking about?

11 A The burn pile.

12 MR. HARRISON: Judge, at this time, I would
13 go ahead and offer what's been marked State's Exhibit
14 Number 19, the drawing Ms. McCarty drew, or the sketch.

15 MR. PERKINS: If I could just ask a couple of
16 questions of the witness on voir dire just to make sure that
17 I don't have any objections to it.

18 THE COURT: Go ahead.

19 MR. PERKINS: Can I approach the board, Your
20 Honor?

21 VOIR DIRE EXAMINATION

22 BY MR. PERKINS:

23 Q Ms. McCarty, my name is Robert Perkins. I don't
24 think we've ever talked before, have we?

25 A No, sir.

1 Q I just have a couple of questions. I'm a little
2 bit mixed up here, which happens from time to time with me.

3 I want to show you what the State has marked
4 as State's Exhibit Number 5. Do you remember seeing that?
5 This fence, this is the back of Carolyn Click's mobile home
6 (indicating)?

7 A Yes, sir.

8 Q And this fence that runs beside it is between her
9 mobile home --

10 A I can't see.

11 Q I'm sorry. I'm trying to get where everybody can
12 see, and I can't do it.

13 A Now, what were you asking me?

14 Q This is the back of Carolyn Click's mobile home
15 (indicating)?

16 A Yes, sir.

17 Q And this fence right here (indicating --

18 A Yes, sir.

19 Q -- divides her from the Hispanic man that lives in
20 the one next to it?

21 A Yes, sir.

22 Q And we're looking at the back of her house, right?
23 Is that right?

24 A This (indicating)?

25 Q That's the back of the house?

1 A Yes, sir.

2 Q Can you see 19 from where you're sitting, ma'am?
3 I'll try to turn it a little bit so you can, if I can.

4 If I'm looking at this right, I'm going to
5 put my finger up here. I didn't bring anything to write
6 with. I'm going to put a little "X" right here
7 (indicating). Is this the front where I put that "X"? Is
8 this the front of her house (indicating)?

9 A Well, that -- yeah, that would be. Since I put
10 the other people across the street, that would be the front
11 of Ms. Click's.

12 Q The street goes through here right (indicating)?

13 A Yes, sir.

14 Q If we're looking at the back of her house --

15 A Yes, sir.

16 Q -- this would be the back corner, right
17 (indicating)?

18 A Yes, sir.

19 Q The back corner of her house?

20 A Uh-huh. Yes, sir.

21 Q And say you live right here (indicating)?

22 A Yes, sir.

23 Q Wouldn't you be on this side of her, if I'm
24 looking at this right, and I may be completely wrong.

25 A Excuse me. This end of the house is -- facing me,

1 is to the right. The end of her house is to the right, if
2 you're looking at the front of the house. If you're looking
3 at the front of our houses and you're standing out there --

4 Q Yes, ma'am.

5 A Okay.

6 Q If you were looking at her house, straight in
7 front of you, would your house be on the -- if you were
8 standing out in front of her house and you were looking at
9 her trailer house, would your house be to the right of hers
10 or to the left of hers?

11 A It would be to the right.

12 Q So actually, this is all reversed, right? You
13 should be over here (indicating); isn't that right? You
14 should be over here (indicating), and this fence that we're
15 talking about is right there?

16 A No, sir. No, sir.

17 Q If you were standing out in the street in front of
18 her house looking at her house. Take your time. I mean,
19 that's fine. I just want to make sure I've got it right.

20 THE WITNESS: May I stand up?

21 THE COURT: Yes, ma'am.

22 A If you're looking at our mobile home --

23 Q (By Mr. Perkins) Yes, ma'am.

24 A -- this is ours. The front of the house is facing
25 me.

1 Q Yes, ma'am.

2 A Okay. So I am to -- I'm over here on this side
3 (indicating).

4 Q Okay. So if you were looking at the front of her
5 house, your house would be on the right-hand side?

6 A If I was turned looking at the backyard, it would
7 be on my right. But I am to the left going down the street.
8 Do you understand what I'm saying?

9 Q No, ma'am. I'm sorry.

10 A Let me show you.

11 Q Sure. Just pretend like you were standing out
12 here in the street in front of the Carolyn Click's mobile
13 home. I'll get this over there closer to you so you don't
14 have to climb that.

15 If you were standing -- we'll make this line
16 that I drew right here, we'll make it the street, okay?

17 A Okay.

18 Q Just say you were standing in the street looking
19 at Carolyn Click's mobile home. Would your mobile home, it
20 would be on the right-hand side, wouldn't it? If you were
21 looking at the front of her mobile home, wouldn't your house
22 be on the right-hand side, ma'am?

23 A That's just what I said.

24 Q Okay.

25 A If I'm looking at the front of her house --

1 Q Yes, ma'am.

2 A I'm over to the right, if I'm standing facing it.

3 Q So this would be your trailer house here then
4 (indicating)?

5 A Why am I not looking to the right?

6 Q Wouldn't this be the back of the mobile homes?

7 A No, sir, not if I'm looking -- I'm standing out in
8 front of the house. I'm looking at the front. If I'm
9 standing at the back of the house, I'm still going to be
10 on -- you go down -- you turn off this street and go down
11 the street, you get midways, Ms. Click is here (indicating).
12 There's a driveway between us, and I am here, and that's
13 looking this way (indicating)?

14 Q Can you just draw like right down street or
15 something so we'll be clear how all of this sets up.

16 A (Complies.)

17 Q So if you were standing in the street and you were
18 looking at Carolyn Click's house --

19 A At the front.

20 Q Can you put "C-C" on there?

21 A (Complies.) This is the front I'm looking at
22 (indicating).

23 Q Yes, ma'am. You can write "front" on there if
24 you'd like.

25 A (Complies.)

1 Q And then can you put your "B-M-C"?

2 A (Complies.)

3 Q So if this was the street -- if this was the
4 street right here (indicating) --

5 THE COURT: Mr. Perkins --

6 Q (By Mr. Perkins) -- and you were standing out in
7 the middle of the street --

8 THE COURT: You've got some jurors who's
9 going to have a hard time seeing what you're doing.

10 MR. PERKINS: I'm sorry, Judge.

11 THE COURT: I know -- do you need the witness
12 to step down?

13 MR. PERKINS: No, Judge. She's fine right
14 there.

15 Q (By Mr. Perkins) If this were the street and you
16 were standing and this was the front of Carolyn Click's
17 house right here where the "X" is, if you were standing
18 there looking at that "X," your house would be on the
19 right-hand side right here where I wrote B-M-C; isn't that
20 correct?

21 A You're right. I'm just turned.

22 Q Yes, ma'am. It's kind of confusing, because this
23 is drawn like this. But this is actually the Hispanic guys
24 house that we see where the fence is.

25 A This is the way we're situated on the street on

1 the front right here (indicating).

2 Q All right. So the fence that we see in this
3 picture that you've talked about in State's Exhibit Number 5
4 is actually right here (indicating) between Carolyn Click's
5 mobile home and this one where the Hispanic gentleman lives?

6 A Yes, sir.

7 Q Can you scratch out that "B-M-C" and just write
8 "Hispanic," so we'll have that clear.

9 A Carmella (phonetics).

10 Q Carmella. That's good.

11 A I'm sorry. I couldn't remember it.

12 Q Thanks, ma'am.

13 A Yes, sir.

14 MR. PERKINS: Judge, I don't have any
15 additional questions.

16 Thank you, Ms. McCarty.

17 THE WITNESS: Yes, sir.

18 THE COURT: With those additions, then
19 State's 19 is admitted without objection.

20 MR. HARRISON: May I approach one more time,
21 Judge?

22 DIRECT EXAMINATION (CONTINUED)

23 BY MR. HARRISON:

24 Q Ms. McCarty, just so we're all on the same page,
25 directly across the street, then, across from Carolyn

1 Click's house would be Twyla Johnson's house?

2 A Yes, sir.

3 Q And directly across the street from you would be
4 Lieanna Wilkerson's house?

5 A Uh-huh.

6 Q Okay. You indicated that this road, this street
7 that we've labeled -- actually, that Mr. Perkins had you
8 draw that you labeled street, was County Road 2323?

9 A Yes, sir.

10 Q Is that in Smith County, Texas?

11 A Yes, sir.

12 Q So Carolyn Click's residence would be in Smith
13 County, Texas?

14 A Yes, sir.

15 Q Her mobile home and the lot on which her house
16 sits?

17 A Yes, sir.

18 Q Now, you indicated that she had lived there for
19 about the last 11 years, and she lived alone.

20 A Yes, sir.

21 Q Was there some point in time in which someone else
22 began staying with or living with Carolyn Click?

23 A Well, her son came.

24 Q Do you know her son's name?

25 A Tracy Beatty.

1 Q And her son who came at some point, do you --
2 first of all, have you met -- did you know that individual?
3 Did you meet him at some point?

4 A No, sir.

5 Q After he came, did you meet him?

6 A Yes, sir.

7 Q Do you see the individual you've identified as
8 Carolyn Click's son, Tracy Beatty, here in the courtroom
9 today?

10 A The gentleman in the middle (pointing).

11 Q Now, I see you pointing. Can you -- is he wearing
12 that blue tie with the white dots?

13 A I can't see. Yes, sir.

14 MR. HARRISON: Your Honor, could the record
15 reflect the witness has pointed to and identified an article
16 of clothing worn by the defendant?

17 THE COURT: The record will reflect the
18 witness has identified the defendant.

19 Q (By Mr. Harrison) Now, when did you first realize
20 that Tracy Beatty had come to stay with his mother, Carolyn
21 Click?

22 A She had told me he was coming to stay with her.

23 Q When was that approximately, as best you can
24 remember?

25 A I believe it was around October.

1 Q October of 2003?

2 A Yes, sir.

3 Q All right. Did you see Mr. Beatty coming and
4 going from the mobile home or there at the property?

5 A They were -- usually, went somewhere together.

6 Q What kind of car did Ms. Click drive?

7 A I'm not sure what kind it was. It was a white
8 with a tan -- kind of like a little station wagon.

9 MR. HARRISON: May I approach the evidence,
10 Your Honor?

11 THE COURT: Yes.

12 Q (By Mr. Harrison) Looking at State's Exhibit
13 Number 2, is that Carolyn Click's car?

14 A Yes, sir.

15 Q All right. That was the car she drove?

16 A Yes, sir.

17 Q Is that the only car she owned, to your knowledge?

18 A Well, she owned one, but it was not in working
19 order.

20 Q Is that the only one that worked?

21 A Yes, sir.

22 Q All right. Is that one that she drove?

23 A Yes, sir.

24 Q Now, you indicated that the defendant first began
25 living with Ms. Click in October of 2003?

1 A Yes, sir.

2 Q Can you -- did this -- as far as Ms. Click's
3 relationship with the defendant, did she describe how it had
4 been to you?

5 A When he first came?

6 Q Yes, ma'am.

7 A She was pleased that he was there.

8 Q Let me ask you this: Did she ever indicate to you
9 any particular problems between she and the defendant, Tracy
10 Beatty, that occurred in the past?

11 A Only later on.

12 Q Sometime in November of 2003, did she indicate to
13 you any past problem between she and Tracy Beatty?

14 A She came over at the house November the 25th.
15 That was the Tuesday before Thanksgiving, and she told me
16 that she had told Tracy --

17 MR. PERKINS: Judge, I'm sorry.

18 Sorry to interrupt, ma'am.

19 I'm going to have to object as to hearsay and
20 incorporate the other objections that I've made previously.

21 THE COURT: Overruled.

22 Q (By Mr. Harrison) On November 25th, 2003, did you
23 have contact with Carolyn Click?

24 A Yes, sir.

25 Q About what time was that that you had -- was that

1 a face-to-face contact with Ms. Click?

2 A Yes, sir. She came over at the house.

3 Q About what time did she come over to your house?

4 A It was about 4:00 in the afternoon.

5 Q 4:00 p.m. on November 25th, 2003?

6 A Yes, sir.

7 Q Did she indicate to you anything about her
8 relationship with Tracy Beatty at that time?

9 A She was unhappy --

10 Q What did she tell you?

11 A She was unhappy about it and had -- did he say I
12 couldn't say what I --

13 Q Ma'am, you can.

14 A That she had asked him to leave that day, and
15 that -- she said, "I put up with all I'm going to put up
16 with, and I had asked him to leave," and she was upset about
17 it. And that's the last time I saw her.

18 Q Did she tell you what time that day she had told
19 Tracy Beatty to leave?

20 A No, sir.

21 Q And this was on November 25th, 2003?

22 A Yes, sir.

23 Q And when you say "she" told you that, was it
24 Carolyn Click who told you that?

25 A Yes, sir, Ms. Click.

1 Q Now, that was November 25th, 2003, at any time
2 before that had Ms. Click talked with you about Tracy Beatty
3 living in her house or not living in her house?

4 A No, sir.

5 Q Was there any other time that Ms. Click had told
6 you about kicking Tracy Beatty out of her house?

7 MR. PERKINS: Your Honor, I'm going to object
8 to leading the witness.

9 THE COURT: Sustained.

10 Q (By Mr. Harrison) Was there any other time
11 sometime that month, earlier of that month in November, that
12 you had had a conversation with Carolyn Click about Tracy
13 Beatty?

14 A Yes. She had asked him to leave one time before.

15 Q About when was that?

16 A Sometime in October, I believe.

17 Q Now, you've talked about the two times Ms. Click
18 told you she had told Tracy Beatty to leave her house.

19 A Yes, sir.

20 Q Did Ms. Click ever talk with you about any
21 problems that she had had with Tracy Beatty before he began
22 living with her in October of 2003?

23 A She had told me that he had assaulted her several
24 times.

25 Q Do you recall when she told you that that -- when

1 she told you about those times?

2 A I'm not sure when it was. Just after we got to
3 know one another and everything, she told me that in just
4 general conversation.

5 Q When -- let me move you back to November 25th,
6 2003, at around 4:00 when Ms. Click told you that she had
7 told the defendant to leave. Can you describe what Carolyn
8 Click's demeanor was when she was telling you this?

9 A Well, she was stressed out and crying and very
10 stressed out over it.

11 Q This would have been 4:00 p.m.

12 A Yes, sir.

13 Q On November 25th, 2003?

14 A Yes, sir.

15 Q Did you ever again, after that, see Carolyn Click
16 alive?

17 A No, sir. She left my house and walked back over
18 to her house, and then I had another appointment and I left,
19 and I never saw her again.

20 Q Did you ever speak to her again after that
21 conversation?

22 A No, sir.

23 Q Did you ever see Tracy Beatty again after that
24 conversation?

25 A No, sir.

1 Q When was the next time you recall seeing Tracy
2 Beatty?

3 A Well, not speaking or talking to him, but I saw
4 him Thanksgiving. I saw him coming from a neighbor's house
5 walking over to Ms. Click's.

6 Q Which neighbor did you see him coming from on
7 Thanksgiving?

8 A Ms. Wilkerson's.

9 Q So you saw the defendant, Tracy Beatty, coming
10 from Lieanna Wilkerson's house back to Ms. Click's house on
11 Thanksgiving?

12 A Yes, sir.

13 Q Do you recall what date Thanksgiving was?

14 A Let's see. Tuesday was the 25th -- be the 27th.

15 Q And when you saw the defendant going from
16 Ms. Wilkerson's house back to Ms. Click's on November 27th,
17 2003, what did you see him do?

18 A I didn't -- I just saw him walking towards the
19 house. I didn't see him go in or anything.

20 Q Did you ever see the defendant, Tracy Beatty,
21 driving?

22 A He started -- he drove her car the weekend after
23 Thanksgiving.

24 Q And when you say "he," you're talking about Tracy
25 Beatty?

1 A Yes, sir.

2 Q You're talking about driving her car. Which car
3 was that.

4 A Carolyn Click's.

5 Q Is that same station wagon that you previously
6 identified?

7 A Yes, sir.

8 Q That would have been the weekend after
9 Thanksgiving?

10 A Yes, sir.

11 Q From that point, the weekend after Thanksgiving
12 where you saw him driving Carolyn Click's car, did you see
13 Tracy Beatty on a fairly regular basis?

14 A No, sir. I would see him out in the yard and
15 talked to him on occasions.

16 Q And from, let's say, November 27th, which would
17 have been Thanksgiving, through December, let's say, 17th,
18 during that time frame, how often would you estimate that
19 you saw Tracy Beatty over at Carolyn Click's house?

20 A Let me get my --

21 Q In --

22 A He was there regularly.

23 Q All right.

24 A Yeah. He would come and go, but he was at the
25 house, yes, sir.

1 Q You would see him coming and going?

2 A Yes, sir.

3 Q What would he be driving during that time period
4 when he was coming and going?

5 A Ms. Click's vehicle.

6 Q Was that unusual to you?

7 A Well, he had never driven it. She always drove
8 him when they would go somewhere.

9 Q During any of the 11 years that Ms. Click was your
10 next door neighbor and specifically during any of that time
11 period and specifically, once Tracy Beatty had moved in with
12 her in October of 2003, before November 25th, have you ever
13 seen Tracy Beatty drive Carolyn Click's car?

14 A No, sir.

15 Q At any time ever?

16 A No, sir.

17 Q Did you at some point have a conversation with or
18 speak with Tracy Beatty?

19 A Yes, sir.

20 Q When was that?

21 A It was the next week after Thanksgiving.

22 Q So sometime in early December?

23 A Yes, sir.

24 Q Did you ask Mr. Beatty about Carolyn Click at all?

25 A Yes, sir. He was outside and I was outside, and

1 we talked at the fence, and I asked him where -- may I call
2 her Callie?

3 Q Yes, ma'am.

4 A Where Callie was.

5 Q Why were you concerned about Callie or Carolyn
6 Click at this point?

7 A Well, it was so out of ordinary, because we always
8 kept in touch, especially on holidays, and she usually would
9 tell me if she was going to be gone. And I thought that was
10 very unusual, and I just wanted to find out where she had
11 gone.

12 Q Now, for the last 11 years with Callie as your
13 neighbor, have you ever seen her on Thanksgiving Day in
14 times past?

15 A Yes, sir.

16 Q What would Carolyn Click do on Thanksgiving for
17 you?

18 A I would usually go to my daughter's, and she would
19 bring Tommy some Thanksgiving dinner to tide him over until
20 I got home.

21 Q Who's Tommy?

22 A Tommy Tucker that lives in the mobile home, also.

23 Q Lives with you?

24 A Yes, sir.

25 Q And when you say that you would be at your

1 daughter's and she would bring over food for Tommy --

2 A Uh-huh.

3 Q -- "she" would be Carolyn Click?

4 A Yes, sir.

5 Q Would that be a regular occurrence on
6 Thanksgivings in the past?

7 A Yes, sir.

8 Q To your recollection, was this year the first
9 Thanksgiving in many years that she had not done that?

10 A She either brought food over or she called us on
11 the phone and wished us Happy Thanksgiving.

12 Q Was this the first time she had not done any --
13 either of those things?

14 A Yes, sir.

15 Q Were you concerned about Carolyn Click at this
16 point?

17 A At that point, I wondered, but I didn't get
18 alarmed until I didn't hear from her on Wednesday -- I mean,
19 after -- by Thursday, I got concerned then. And then when
20 we didn't have any -- hear anything from her then, yes, sir,
21 we did.

22 Q Was it unusual for Carolyn Click to be gone and
23 you not know her whereabouts?

24 A Yes, sir.

25 Q Can you explain that?

1 A Well, she always wanted somebody to watch her
2 house, and it was vice versa with us. And feed her animals
3 if she was going to be gone. She wanted to make sure that
4 they were all taken care of and that her house, we watched
5 it.

6 Q Let me move ahead now to the conversation you had
7 with the defendant, Tracy Beatty.

8 A Yes, sir.

9 Q You said that was between y'all's fence?

10 A Yes, sir.

11 Q That was sometime in early December?

12 A Yes, sir. Yes, it was after Thanksgiving the next
13 week?

14 Q Did you ask Tracy Beatty about Carolyn Click,
15 about her health or whereabouts or what her status was?

16 A I asked Tracy where Callie was, and he told me
17 that she had gone off with a man named Junior, and they had
18 gone to Kansas.

19 Q Let me ask you this: Did you know any man named
20 Junior?

21 A I didn't know him by Junior.

22 Q Had you known any man that Carolyn Click -- that
23 you might have thought Carolyn Click would go off with?

24 A No, sir.

25 Q Once he tells you she's gone to Kansas with

1 Junior, what did you think?

2 A I just thought it was strange for her to go off
3 without telling -- Ms. Click to go out without telling us
4 anything.

5 Q Did you ask anything further, or did Tracy Beatty
6 tell you anything further about where she might be?

7 A He told her (sic) at Kansas at the time, and then
8 later on, when she didn't come back, I asked him again where
9 Ms. Click was, and he said that they had stopped in Oklahoma
10 to visit Junior's sister. I believe he said his sister.
11 And that she wouldn't be -- she would be home about the next
12 Thursday.

13 Q Did he say anything else about -- at any other
14 time about where Carolyn might be?

15 A After she didn't come home on Thursday, well, I
16 asked him again when she was coming home, and he said that
17 she was staying with someone in Jacksonville and that she
18 would be home about the 17th of December.

19 Q Did he tell you anything else about when Carolyn
20 Click came home on December 17th, what was going to happen?

21 A She was going to wait until he left the house, and
22 she wanted him gone by the 17th, because that's when she was
23 coming home.

24 Q That's what Tracy Beatty told you that Carolyn
25 Click told him?

1 A Yes, sir.

2 Q She wanted him out by December 17th?

3 A Yes, sir.

4 Q And that was the date that Tracy Beatty told you
5 that she would be arriving back in Tyler?

6 A December the 17th.

7 Q Are you getting more and more concerned?

8 A Very, yes, sir.

9 Q Did you or Thomas Tucker ever call anybody, notify
10 the police or report anything?

11 A Yes, sir, Tommy did.

12 Q Who did he call, if you know?

13 A I'm not sure who he talked to at that time.

14 Q Did he call the police?

15 A The Sheriff's Department.

16 Q Still sometime in early December, did you have an
17 opportunity to look in the backyard of Carolyn Click and see
18 anything peculiar?

19 A Well, I went over to water the dogs, but I didn't
20 pay any attention to anything. I just went over and took
21 care of the animals.

22 MR. HARRISON: May I approach the evidence,
23 Your Honor.

24 THE COURT: Mr. Harrison, we're going to have
25 to recess for the noon hour. I apologize for interrupting

1 your direct, but we're going to need to recess for the noon
2 hour.

3 MR. HARRISON: I actually only have a couple
4 more questions.

5 THE COURT: Go ahead and finish up. I was
6 trying to wait. I thought you might be getting close.

7 Q (By Mr. Harrison) Ms. McCarty, showing you State's
8 Exhibit Number 17, you had previously said that you thought
9 that was a burn pile from Ms. Click's house?

10 A Yes, sir.

11 Q Sometime in December, while Carolyn Click was away
12 from her house, did you see this burn pile?

13 A Yes, sir. Tracy was out most of the day burning
14 things in that backyard.

15 Q Do you know -- do you have personal knowledge what
16 he may have been burning?

17 A No, sir. I really didn't pay that much attention
18 to it.

19 Q But you saw him out burning sometime in early
20 December?

21 A Yes, sir.

22 Q Had you been asked to water the dogs, or did you
23 just do it because Ms. Click was gone for so long?

24 A I did it when no one was there to water them. She
25 always expected me to, Ms. Click did.

1 Q And during this time period, from November 25th to
2 December 17th, you saw the defendant, Tracy Beatty, coming
3 and going from the house?

4 A Yes, sir.

5 Q And coming and going in Ms. Click's car?

6 A Yes, sir.

7 Q And prior to November 25th, you had never seen
8 Tracy Beatty drive her car?

9 A I didn't -- never saw him drive her car,
10 Ms. Click's car.

11 MR. HARRISON: Thank you, Ms. McCarty.

12 Your Honor, I'll pass the witness.

13 THE COURT: Ladies and Gentlemen, we're going
14 to recess now for the noon hour.

15 Ms. McCarty, if you just remain seated there
16 just a moment, ma'am.

17 THE COURT: All rise for the jury.

18 (The jury leaves the courtroom.)

19 (Lunch recess.)

20 (Proceedings continued in Volume 38.)

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1 STATE OF TEXAS *


2 COUNTY OF SMITH *


3 We, STEVE R. AWBREY, CSR, Official Court Reporter, and
 4 KIM CHRISTOPHER, CSR, Deputy Official Court Reporter, for
 5 the 241st Judicial District Court in Smith County, Texas, do
 6 hereby certify that the above and foregoing contains a true
 7 and correct transcription of all of the proceedings in the
 8 foregoing styled and numbered cause, all of which occurred
 9 in open court or in chambers and were reported by us.

10 We further certify that this transcription of the
 11 record of the proceedings truly and correctly reflects the
 12 exhibits, if any, offered by the respective parties.

13 Witness our hand this the 19 day of

14 May, 2005.

17
 18 
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